

**CITY OF BRIGHTON, COLORADO
REGULAR SESSION
AUGUST 5, 2014
7:00 P.M.**

***THERE IS A 5-MINUTE
LIMIT TO ADDRESS
COUNCIL.**

**MAYOR
MAYOR PRO-TEM

COUNCIL MEMBERS**

- RICHARD N MCLEAN
- KIRBY WALLIN
- LYNN BACA
- REX BELL
- JW EDWARDS
- MARK HUMBERT
- JOAN KNISS
- KEN KREUTZER
- CYNTHIA A MARTINEZ

1. CALL TO ORDER

- A. Pledge of Allegiance to the American Flag.
- B. Roll Call.

2. CONSENT AGENDA

- A. Approval of the June 3, 2014 City Council Minutes.

3. APPROVAL OF REGULAR AGENDA (Council may take a short break between 8:30–9:00 p.m.)

4. CEREMONIES

- A. Recognition of Adams County Fair Organizers.
- B. Introduction of New Employees by Chief of Police Clint Blackhurst.
- C. Police Explorer Post Recognition.

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)

6. PUBLIC HEARINGS

7. ORDINANCES FOR INITIAL CONSIDERATION

8. RESOLUTIONS

- A. A Resolution of the City Council of the City of Brighton, Colorado, Appointing Steve Puckett as a Member of the Liquor Licensing Authority to fill an Unexpired Term to January, 2017.
- B. A Resolution of the City Council of the City of Brighton, Colorado, Approving the Fourth (4th) Amendment to the Pheasant Ridge Development Agreement; Authorizing the Mayor to Execute said Fourth Amendment on Behalf of the City; Authorizing the City Manager to Undertake such Tasks and Execute said Documents as may be Required to Implement and Enforce the Provisions of said Fourth Amendment; and Setting Forth Other Details Related Thereto.

- C. A Resolution of the City Council of the City of Brighton, Colorado, Accepting the Bid of W.L. Contractors, Inc. and Awarding the Contract for the Traffic Signal Construction at Baseline Road & North Main Street, Bid #14-032, in an Amount not to exceed Two Hundred Thirty Five Thousand Eight Hundred Forty Five Dollars (\$235,845.00), and Authorizing the Mayor to Sign the Contract on Behalf of the City and the City Clerk to Attest Thereto.
- D. A Resolution of the City Council of the City of Brighton, Colorado, Accepting the Proposal Gonzales Custom Painting, Inc. and Awarding the Contract for the Interior Painting at the Recreation Center-Phase 1, RFP #14-040-R, in an amount not to exceed Fifty Five Thousand Dollars (\$55,000), and Authorizing the Mayor to Sign the Contract on Behalf of the City.
- E. A Resolution of the City Council of the City of Brighton, Colorado Approving Change Order #1 to the City of Brighton Contract with KECI, Inc. for Construction Services for the US85 and Bromley Lane Project (Main Street Realignment) in the Amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000); Authorizing the City Manager to Execute said Change Order No. 1 on Behalf of the City; Authorizing the City Manager, or his Designee to Undertake such Tasks and Execute such Documents as may be Required to Implement the Change Order and Complete the Project; and Setting Forth Other Details Related Thereto.
- F. A Resolution of the City Council of the City of Brighton, Colorado Approving Change Order #1 to the City of Brighton Contract with Vision Land Consultants (N/K/A Bowman Vision Land, LLC) in an Amount not to exceed One Hundred Ten Thousand Dollars (\$110,000) for Additional Professional Services for the US85 and Bromley Lane Project (Main Street Realignment) in the Amount of \$110,000; Authorizing the City Manager to Execute said Change Order #1 on Behalf of the City; Authorizing the City Manager or his Designee to Undertake such Tasks and Execute such Documents as may be Required to Implement the Change Order and Finalize the Project; and Setting Forth Other Details Related Thereto.
- G. A Resolution of the City Council of the City of Brighton, Colorado, Approving the Following, in Furtherance of Completing the “Eagle Preserve / Prairie Lakes Wildlife Preserve” Open Space Acquisition: (1) That Certain Purchase and Sale Agreement (“PSA”) Between the City and RH VI, LLC and Forterra Investments, LTD. (“Owner” and “Seller”), For the Purchase and Sale of Certain Adams County Agricultural Lands, Together with Certain Easements and Mineral Rights (The “PSA”); (2) Approving that Certain Conservation Easement Agreement between the City and Adams County to help Fund the Acquisition and Preserve the Property (The “Conservation Easement”); (3) Approving that Certain Funding Agreement Between the City and the State of Colorado for Funding Purposes (The “Funding Agreement”); and (4) Authorizing and Directing the City Manager or his Designees to take such Actions and Execute such Documents as are Reasonably Necessary to Carry Out and Successfully Close the Transaction for the City.
- H. A Resolution of the City Council of Brighton, Colorado Approving an FPPA Employer Election Regarding Increasing the Member Contributions Rate for the Statewide Defined Benefit Plan for Brighton Police Officers by an Additional Two Percent (2%) of Base Salary Paid; Authorizing said Increase to Begin in January of 2015; Authorizing the City Manager to Undertake such Actions as may be Required to Implement said Increase; Instructing the City Clerk to Provide a Copy of This Resolution to the Fire and Police Pension Association no Later than August 22, 2014; and Setting Forth Other Details Related Thereto.
- I. A Resolution of the City Council of the City of Brighton, Colorado Approving Lodging Tax Mini-Grants from the Lodging Tax Fund in the Amount of Thirteen Thousand Five Hundred (\$13,500.00), for Calendar Year 2014; Designating the Recipients and Amounts of said Grants; Authorizing the City Manager to Execute the Agreements with the Recipients of the 2014 Allocation on Behalf of the City; and Setting Forth Other Details Related Thereto.

- J. A Resolution of the City Council of the City of Brighton, Colorado, Designating the Amount of the 2013 Brighton Residents Food Tax Revenue to be Rebated in Calendar Year 2014 at Zero Dollars (\$0.00) and Appropriating that Amount for Expenditure in 2014.

9. UTILITIES BUSINESS ITEMS

Ordinances

- A. An Ordinance of the City Council of the City of Brighton, Colorado Establishing a Pilot Program and Resulting Accounts to Assist Brighton Families and Individuals who have a Temporary and Urgent Financial Inability to Pay their Utility Bill to the City; Authorizing the City Finance Department to Accept Voluntary "Round-Up" Contributions to said Accounts; Setting aside \$25,000 from the City's General Fund for use in the Utility Payment Assistance Accounts; Authorizing the Finance Director, Upon Recommendation of the Utility Billing Coordinator, to Approve Assistance Awards from the Accounts; Directing the City Manager to Establish Policies and Procedures Including the Criteria and Standards for Eligibility for Assistance Awards; and, Setting Forth Details in Relation Thereto. **(First Reading)**

Resolutions

- B. A Resolution Amending Certain Accounts in the Water Fund and Appropriating Money for Expenditure. (Well #11)
- C. A Resolution of the City Council of the City of Brighton, Colorado, Accepting an Amendment to the Agreement with Urban Drainage and Flood Control District No. 06-01.25D Regarding Design and Construction of Drainage and Flood Control Improvements for the North Outfall, City of Brighton and Authorizing the Mayor to Sign the Agreement on Behalf of the City.

10. GENERAL BUSINESS

11. REPORTS

- A. By the Mayor
B. By Department Heads
C. By the City Attorney
D. By the City Manager

12. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

13. EXECUTIVE SESSION

14. ADJOURNMENT

City Council Agenda Item 2A

**MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL
FOR THE CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF
COLORADO, HELD ON JUNE 3, 2014.**

1. CALL TO ORDER

Mayor McLean called the meeting to order at 7:03 p.m.

A. Pledge of Allegiance to the American Flag.

Eagle Scout Michael Dayin Haberkamp led the recitation of the Pledge of Allegiance to the American Flag.

B. Roll Call.

Council present: Mayor McLean, Councilmembers Baca, Bell, Edwards, Humbert, Kniss, and Martinez.

Council absent: Mayor Pro Tem Wallin and Councilmember Kreutzer (excused).

2. CONSENT AGENDA

3. APPROVAL OF REGULAR AGENDA (Council will take a short break between 8:30–9:00 p.m.)

Motion by Councilmember Baca to approve the Regular Agenda as presented, **second by Councilmember Humbert.**

Voting aye: All present.

4. CEREMONIES

A. Brighton Relay for Life Month Proclamation.

Mayor McLean read the Proclamation into the record and presented it to Michele Lussier, Brighton Relay for Life Chairperson.

Motion by Councilmember Edwards, second by Councilmember Kniss to approve the Proclamation.

Voting aye: All present.

B. Recognition of Eagle Scout Michael Dayin Haberkamp.

Mayor McLean read the Certificate of Recognition into the record and presented it to Eagle Scout Michael Dayin Haberkamp.

Motion by Councilmember Martinez, second by Councilmember Bell to approve the Certificate of Recognition.

Voting aye: All present.

Eagle Scout Michael Dayin Haberkamp thanked City Council and explained his Eagle Scout project.

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)

Madonna McCollum, 753 Mockingbird Lane, Brighton, Colorado. Ms. McCollum expressed her concern regarding fracking in the City of Brighton and asked if fracking is taking place under her home, Ken Mitchell Park or the Ken Mitchell Open Space.

Keya Horiuchi, 735 South 8th Avenue, Brighton, Colorado. Ms. Horiuchi expressed her concern regarding fracking and presented some information to City Council.

6. PUBLIC HEARINGS

7. ORDINANCES FOR FINAL CONSIDERATION

8. RESOLUTIONS

A. A Resolution of the City Council of the City of Brighton, Colorado Approving a Non-Exclusive “Right-of-Way Usage and License Agreement” by and Between the City and Key Sign Plazas, LLC., for the Installation, Maintenance and Operation of “Sign Kiosks” within the City; Setting Forth the Consideration and Term for such Agreement; Designating the ‘Licensed Areas’ for said Sign Kiosks; Authorizing the City Manager to Execute and Implement said Agreement; and Setting Forth Other Details Related Thereto.

Mayor McLean read the title of the Resolution into the record.

Assistant City Manager of Development Marv Falconburg explained that a few years ago Economic Development partnered with Karl Kasch to place ‘wayfinding’ signs throughout the City. This program worked well and Mr. Kasch has come back to the City with a proposal for a ‘wayfinding’ sign program for residential development. The proposal is for a development sign program which has been utilized by Commerce City, Aurora, and Castle Rock. Multiple design kiosks will be installed in the City as directional signs with the first phase providing for the installation of thirteen (13) signs. There will not be a cost to the City for these signs, and in fact the City will receive an annual fee by the licensee installing the signs.

The purpose of this program is to provide a more cohesive and visually pleasing orientation for development signs. Most developers do opt into programs like this because they see the value in these signs and let go of some of their other signage. The signs are installed and maintained by the licensee but the City retains ultimate control over the placement of these signs. Streets and Fleet, Economic Development and Community Development have worked together to put this plan together.

Staff believes that it is a well themed and managed sign program that supports the goals and objectives of the City. The signs will be the same size as the current ‘wayfinding’ signs in the City. City Council suggested that this sign program might be a way to support the School District 27J Capital Facilities Fee Foundation program and the applicant is willing to work with the City on this request. If this agreement is approved, direction will be given to the City Manager to enter into this agreement that would be ongoing for a period of time. The City Manager can work with the licensee if they would like to place more signs or any other issues they might have. Assistant City Manager of Development Falconburg introduced Karl Kasch and Wayne Dodge.

Karl Kasch with Key Sign Plazas, LLC, 6551 South Revere Parkway, Suite 265, Centennial, Colorado 80111. Mr. Kasch explained that this dialogue began a few years ago regarding this program. Mr. Kasch introduced partner Wayne Dodge with Dodge Signs who is becoming more involved in the City and Economic Development. Sign Codes address onsite signs for builders and

developers but do not typically address offsite signage. Builders will typically use weekend directional signs which are put up on Friday and taken down on Sunday. Castle Rock, Aurora and Commerce City have all worked with Mr. Kasch to install the residential development signs in their communities. The builders supported having an organized program where they could have multiple panels in a lease arrangement that could be built into their signage program. Key Sign Plazas, LLC uses non-exclusive license agreements. These signs are not placed in individual developments; they are placed on arterials to get people to sales centers and model homes for a variety of builders/developers.

The residential lease board structures for the City of Brighton will be the same design as the 'wayfinding' signs currently in place throughout the City. The program will begin with thirteen (13) sign structures in the first phase. Mr. Kasch will work with staff to place future signs as they are needed with new growth in the City. It is the goal of Mr. Kasch to serve small and large builders equitably. The license agreement was put together with help from City Staff and the City Attorney to make sure the City's needs are met regarding safety standards, fees and location for the signs. Mr. Kasch is aware of the importance of the Capital Facility Fees Foundation through School District 27J and is willing to donate a panel recognizing that the builders in the City are proud contributors to this program. Regarding future kiosks Mr. Kasch will make an application to amend the agreement which staff is allowed to amend administratively.

Mr. Kasch looks forward to working with the City and hopes that the City will also be proud of the program. Using this program will hopefully keep builders from paying for their own signs to be placed throughout the City. Some builders may also cut back on their use of weekend directional signs if they are involved in this program. If this agreement is approved Mr. Kasch and his partners hope to get started on this program as soon as possible.

Assistant City Manager of Development Marv Falconburg, Karl Kasch and Wayne Dodge with Dodge Sign Company answered questions from Council regarding:

- The homebuilders pay a fee for the signs and the City benefits financially.
- Any negative comments regarding the current 'wayfinding' signs.
- The parties responsible for the weekend directional signs and this program eliminating those signs.
- The amount the City will be paid for these structures.
- This program being started through Economic Development.
- The ability to expand this program to other businesses.
- Other cities using this program for other types of businesses.
- How long ago Mr. Kasch instituted this program.

Motion by Councilmember Baca to approve Resolution 2014-47 the title of which as read by Mayor McLean, **second by Councilmember Humbert.**

Voting aye: All present.

9. UTILITIES BUSINESS ITEMS

Ordinances

Resolutions

10. GENERAL BUSINESS

11. REPORTS

- A. By the Mayor – Mayor McLean** reminded City Council that their evaluations of the Municipal Judges are due by the end of July. Mayor McLean reminded City Council to turn in their desired date for City facility tours and asked Council to RSVP to their invitations for the upcoming Colorado Municipal League conference.
- B. By Department Heads – Economic Development Director Robert Smith** reported that King Soopers is opening soon and will be having an event on July 15th at 4:00 p.m. for elected officials and will have the ribbon cutting and grand opening on July 16th at 9:00 a.m. There is a new community brand program that is taking place within the EDC. There are billboards featuring the saying “It all grows in Brighton” and this effort will be combined with a launch at Culturefest.
- C. By the City Attorney –** No report.
- D. By the City Manager –** No report.

12. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

Councilmember Humbert reported that the Blues Blast was a successful event. Councilmember Humbert attended an event at Adams County and they had a development plan for Welby and in that process they had eleven (11) community meetings to allow the public to contribute to the plan. Councilmember Humbert feels the upcoming Community BBQ will be a good place to get some information out to the public.

Councilmember Martinez attended a wonderful event at the Wings over the Rockies at the Lowry Development and it was a great time. Culturefest will take place this Saturday.

Councilmember Kniss announced that the artwork in the lobby of City Hall will be coming down this weekend and encouraged everyone that has not seen it to come by before the new exhibit on June 14, 2014. Councilmember Kniss commented that she likes the billboard on I-76 regarding the City’s new branding campaign. The Legacy Foundation is providing \$4,000.00 in scholarships this year which is possible because of fundraising efforts like the Disc Golf Tournament that was held on Saturday at Benedict Park. The Legacy Foundation will be hosting a Kickball Tournament on Saturday, June 21, 2014.

13. EXECUTIVE SESSION

For the Purpose of Determining Positions Relative to Matters that may be Subject to Negotiations, Developing Strategy for Negotiations, and/or Instructing Negotiators, Under C.R.S. Section 24-6-402(4)(e) Regarding Water Shares

Motion by Councilmember Martinez, second by Councilmember Bell to go into Executive Session at 8:23 p.m.

Voting aye: All present.

14. ADJOURNMENT

Motion by Councilmember Martinez, second by Councilmember Baca to adjourn at 8:24 p.m.

Voting aye: All present.

CITY OF BRIGHTON, COLORADO

DRAFT

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approval Date

**City Council
Agenda Item
8A**

OFFICE OF THE CITY CLERK

To:	<i>Mayor and City Council Members Manuel Esquibel, City Manager</i>
Prepared By:	<i>Karen Borkowski Surine for Natalie Hoel, City Clerk</i>
Date Prepared:	<i>July 23, 2014</i>
Reference:	<i>Board Appointment for the Liquor Licensing Authority</i>

PURPOSE:

To appoint by Resolution Alternate Steve Puckett as a member to the Liquor Licensing Authority to fill an unexpired term.

BACKGROUND:

Per City Council Policy, applicants are required to go through an interview process and, upon City Council recommendation; members are appointed by the Mayor with Ratification by City Council. Steve Puckett was interviewed by City Council and appointed as an Alternate to the Liquor Licensing Authority effective October, 2013. On July 7, 2014, Milton Oglesby resigned leaving an unexpired term. City Council wishes to waive an additional interview and appoint Steve Puckett to fill the unexpired term.

The City Clerk's Office will advertise for an Alternate to the Local Liquor Licensing Authority.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON,
COLORADO, APPOINTING STEVE PUCKETT AS A MEMBER OF THE LIQUOR
LICENSING AUTHORITY TO FILL AN UNEXPIRED TERM TO JANUARY, 2017.**

RESOLUTION NO. _____

WHEREAS, the Mayor and City Council approved Ordinance 2002 on July 1, 2009, Amending the Policies for Appointment of Members to City Board, Commissions and Authorities to Specify term limits for Certain Board, Commission and Authority Appointees; and

WHEREAS, City Council interviewed and appointed Steve Puckett as an Alternate on the Liquor Licensing Authority in October 2013; and

WHEREAS, Milton Ogelsby resigned the Liquor Licensing Authority effective July 7, 2014 leaving an unexpired term to fill; and

WHEREAS, the City Council desires to enable the Liquor Licensing Authority to function and work toward the betterment of the City.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, THAT THE FOLLOWING APPOINTMENT BE MADE.

LIQUOR LICENSING AUTHORITY

1. Steve Puckett

Term: January, 2017

Adopted this 5th day of August, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

**City Council
Agenda Item
8B**

PLANNING DIVISION STAFF REPORT

To: Mayor and City Council
Through City Manager, Manuel Esquibel

Reviewed By: Holly Prather, AICP, Community Development Director

Prepared By: Jason Bradford, AICP, Planning Division Manager

Date Prepared: July 11, 2014

Meeting Date: August 5, 2014

Requested Action: Review and consider a Resolution for a Development Agreement Amendment for the Pheasant Ridge Subdivision

PURPOSE:

The *Land Use and Development Code*, Section 17-40-220, *Subdivision Agreement, Performance Bond, and Schedule of Improvements*, of the *Subdivision Regulations* requires a subdivision agreement (a.k.a. development agreement) to be approved by the City Council by a Resolution.

BACKGROUND:

The Pheasant Ridge Development Agreement (the “Development Agreement”) was originally approved by City Council on January 18, 2000. The City entered into the Development Agreement with the original developer and property owner, the Ryland Group, Inc., (“Ryland”). The Development Agreement specified the public improvements Ryland would need to construct during different phases of development. The Pheasant Ridge subdivision, which is nearly 160 acres in size, was divided into nine (9) phases of development.

Among other things, the Development Agreement included the requirement to construct Southern Street, Tower Road, and the eastern one-half of Bridge Street, where adjacent to the subdivision, during the last two phases of development, Phases 8 and 9. The City anticipated that Ryland would construct these roadways toward the end of the subdivision build-out, after a majority of the homes in the subdivision had been built and sold. The money from these sales would then provide Ryland the ability to finance the significant public improvements required for Phases 8 and 9. These public improvements were required to be constructed before any further development would occur in the last two development phases, Phases 8 and 9.

At the time the Development Agreement was drafted, the residential building industry in Brighton was very robust. Ryland completed development through Phase 7 and then, in 2006, sold the remaining undeveloped portion of the subdivision (Phase 8 and Phase 9) to Southwest Pheasant Ridge, LLC. However, Southwest Pheasant Ridge did not develop the remaining undeveloped portion of the subdivision before the “housing bubble” and the “Great Recession,” and the land remains undeveloped to this day.

The land went into foreclosure and the remaining undeveloped portion of the subdivision is now owned by Montex Lands, Inc., ("Montex"). Since acquiring the remainder of the subdivision, Montex has stated that it is unable to develop the remaining portions of the subdivision because the significant up-front expenses required to construct the required public improvements in Phases 8 and 9 are cost-prohibitive, and the development potential for the remaining undeveloped portion of the subdivision is not significant enough to justify the financial risk required to construct the outstanding public improvements. Based upon the existing Development Agreement, Montex, or any other developer, will be unable to build on the remaining undeveloped portion of the subdivision until Southern Street, Tower Road, and the eastern one-half of Bridge Street are constructed.

Southern Street, Tower Road, and the eastern one-half of Bridge Street, where adjacent to the Pheasant Ridge subdivision, are currently missing links in Brighton's roadway network. The construction of these important roadways is necessary to complete the transportation network in this part of the City. As such, the City has announced its intention to connect these missing links, by constructing Southern Street and a portion of Tower Road (the "Interim Tower Road"). Montex has approached the City with a proposal to revise the terms of the existing Development Agreement, which will financially allow Montex to build on the remaining portion of the subdivision.

SUMMARY OF DEVELOPMENT AGREEMENT AMENDMENT:

Montex has proposed that the Development Agreement be amended (the "Amendment") to reflect the City's intention of constructing Southern Street and the Interim Tower Road (S. 40th Avenue). The Amendment sets forth the process by which Montex will reimburse the City for the construction costs associated with the City's construction of Southern Street and the Interim Tower Road (S. 40th Avenue).

Tower Road (S. 40th Avenue).

The existing Development Agreement requires Montex, or a successor Developer, to construct and improve the west one-half of Tower Road (S. 40th Avenue), where adjacent to the subdivision, as a minor arterial street. The Amendment states that the City will assume the responsibility for this construction. The interior lane and center median will be paid for by Montex with Traffic Impact Fees, which are due at the time of the issuance of building permits for the Development. The western outside travel lane (including curb, gutter, sidewalk, and landscaping), along the entire eastern boundary of the subdivision, and one-quarter (1/4) of the cost of a traffic signal at the intersection of Tower Road (S. 40th Avenue) and Bridge Street, will be paid by Montex into a separate Street Improvement Escrow Account.

Southern Street.

The existing Development Agreement requires Montex, or a successor Developer, to construct Southern Street, where adjacent to the subdivision, as a rural street section (no curb and gutter). The Amendment states that the City will assume the responsibility for this construction. The cost of this construction will be paid by Montex into a separate Street Improvement Escrow Account.

Street Improvement Escrow Account.

As is typical with all development in the City, the Amendment requires Montex to pay the required Traffic Impact Fees at the time of building permits. Such payments are a condition of the issuance of a building permit.

In addition to the Traffic Impact Fees, the Amendment requires Montex to pay into the Street Improvement Escrow Account, the cost of constructing:

1. the western outside travel lane of Tower Road (S. 40th Avenue), including curb, gutter, sidewalk, and landscaping, along the entire eastern boundary of the subdivision, and
2. one-quarter (1/4) of the cost of a traffic signal at the intersection of Tower Road (S. 40th Avenue) and Bridge Street, and
3. Southern Street along the entire southern boundary of the subdivision.

The escrow amounts shall be paid to the City in installments, at the time of building permits, as the subdivision is developed. The amount of each installment payment is based on the estimated costs of redesigning and constructing Tower Road (S. 40th Avenue), Southern Street, and a traffic signal, divided by the number of remaining single-family detached lots, single-family attached square footage, and commercial square footage proposed to be built within the subdivision.

Bridge Street.

The existing Development Agreement requires Montex, or a successor Developer, to construct the southern one-half of the eastern section of Bridge Street, from Sierra Street to Tower Road (S. 40th Avenue), as a major arterial street, prior to development occurring within Phase 8 or 9. The Amendment requires that this section of Bridge Street must be constructed by Montex prior to, and as a condition of, issuance of the first Certificate of Occupancy within Tracts J or K, the single-family attached and commercial parcels respectively.

Estrella Street.

The Amendment requires Montex to construct Estrella Street, from the Cerillos Street intersection on the west to the Tower Road (S. 40th Avenue) intersection on the east. Montex will complete the construction of Estrella Street prior to, and as a condition precedent to, the issuance of a Certificate of Occupancy for the first single-family detached permit that is issued after the Interim Tower Road construction by the City.

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM:

- *Land Use and Development Code*

OPTIONS FOR COUNCIL'S CONSIDERATION:

- Approve the Development Agreement Amendment
- Not approve the Development Agreement Amendment
- Approve the Development Agreement Amendment with conditions

STAFF ANALYSIS:

Based upon discussions with Montex, the remaining undeveloped portion of the Pheasant Ridge Subdivision is unlikely to be developed given the extensive up-front public improvement obligations required by the existing Pheasant Ridge Development Agreement. According to

Montex, the development potential for the remaining undeveloped portion of the subdivision is not significant enough to justify the financial risk required to construct the outstanding public improvements required by the existing Development Agreement prior to development.

When the original Development Agreement was established, in 2000, the residential market in Brighton was very robust and the City anticipated that Ryland would construct the remaining public improvements within Phases 8 and 9 with the money from the sale of their homes within the subdivision. The Development Agreement was established before the “Housing Bubble” and the “Great Recession,” and the Development Agreement did not anticipate the market crash or that a Developer would leave the subdivision partially developed. Given the current housing market, it seems that few, if any, developers are willing, or have the financial capability, to up-front the significant costs of constructing the remaining public improvements required in Phase 8 and 9. City staff has worked with the current developer, Montex, to use the City’s plan to construct Southern Street and an Interim Tower Road (S. 40th Avenue) adjacent to the Pheasant Ridge subdivision to get this important transportation infrastructure built while assuring that Montex pay for its share of the costs of such construction. The Amendment to the existing Development Agreement would allow Montex, or a successor developer, to start construction and pay for the required public improvements over a period of time, with the sale of homes and lots.

Staff finds the Development Agreement Amendment to be in compliance with the requirements set forth in the *Land Use Development Code*. Therefore staff has provided a draft Resolution approving the Development Agreement Amendment.

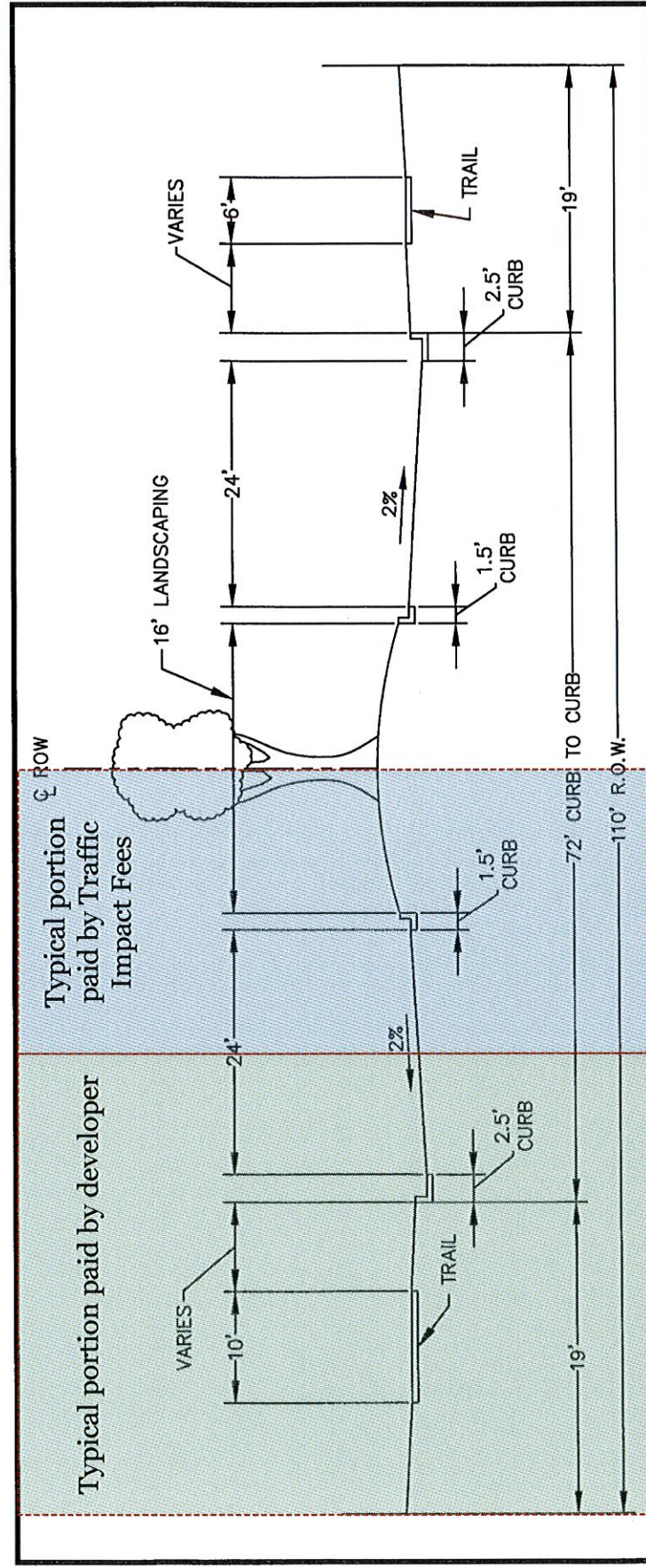
ATTACHMENTS:

- Vicinity Map
- Tower Road Cross-Section and Financing Diagram
- Resolution (draft)
- Development Agreement Amendment (exhibit to the Resolution)

Vicinity Map



Tower Road Cross-Section



CITY COUNCIL RESOLUTION

PHEASANT RIDGE DEVELOPMENT AGREEMENT AMENDMENT No. 4

RESOLUTION No. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE FOURTH (4TH) AMENDMENT TO THE PHEASANT RIDGE DEVELOPMENT AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE SAID FOURTH AMENDMENT ON BEHALF OF THE CITY; AUTHORIZING THE CITY MANAGER TO UNDERTAKE SUCH TASKS AND EXECUTE SAID DOCUMENTS AS MAY BE REQUIRED TO IMPLEMENT AND ENFORCE THE PROVISIONS OF SAID FOURTH AMENDMENT; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

WHEREAS, the Applicant, David Erb of David J. Erb and Company (the "Applicant"), on behalf of the Owner and Developer, Montex Lands, Inc. (the "Owner" and the "Developer"), is requesting approval of a fourth amendment to the Pheasant Ridge Development Agreement (the "Fourth Amendment"), attached hereto as **Exhibit A** and incorporated herein by this reference; and

WHEREAS, The Pheasant Ridge Development Agreement was originally approved on January 18, 2000 and recorded on March 13, 2000 in Adams County, Book 6061, Pages 591-635, Reception No. C0648991, by and between the City of Brighton (the "City") and The Ryland Group, Inc., a Maryland Corporation ("Ryland"); the Agreement was thereafter subsequently amended, this being the Fourth Amendment; and

WHEREAS, Montex is the successor in interest and in title to Ryland, and is, in all respects and for all purposes, the Developer and Owner under the Pheasant Ridge Development Agreement, as amended, subject to any future assignment of Montex's interests and obligations of the Pheasant Ridge Development Agreement; and

WHEREAS, This Fourth Amendment relates to the Pheasant Ridge Subdivision ("Pheasant Ridge"), which was originally approved on January 18, 2000 by the Brighton City Council, and the Final Plat thereof recorded on March 13, 2000 in Adams County, File No. 18, Map No. 194, at Reception No. C0648992, and also the Pheasant Ridge Subdivision, Amended Plat No. 2 ("Pheasant Ridge 2nd Amendment"), which was approved on December 13, 2006 by the Community Development Director and recorded on December 18, 2006, in Adams County at Reception No. 2006001011114. For the purposes of this Fourth Amendment, the Pheasant Ridge Subdivision and the Pheasant Ridge 2nd Amendment, are collectively referred to as the "Subdivision;" and

WHEREAS, This Fourth Amendment relates specifically to the phasing, construction and payment for certain specific public improvements of the Subdivision, including: Tower Road (S. 40th Avenue), Southern Street, Bridge Street, and Estrella Street, for the remaining, unimproved real property within the Subdivision, incorporated herein as follows (the "Property"):

Lots 1 through 10, Block 16, and
Lots 1 through 7, Block 21, and
Tract I, Tract J, and Tract K,
Pheasant Ridge Subdivision,
County of Adams,
State of Colorado;

and

Lots 1-56, Block 1,
Pheasant Ridge Subdivision, Amended Plat No. 2,
County of Adams,
State of Colorado

WHEREAS, Montex is the Developer and current Owner of the Property, which Property comprises all of the remaining, unimproved real property within the Subdivision and is subject to the Pheasant Ridge Development Agreement, as amended; and

WHEREAS, the phasing and construction plans of the original Pheasant Ridge Development Agreement were drafted during an historic residential building expansion, and required the Developer, at its expense, to construct significant public improvements prior to any other construction within the last two (2) phases of the Subdivision (Phases 8 and 9); and

WHEREAS, Montex desires and intends to complete the construction and development in Phases 8 and 9, and also shall complete and/or reimburse the City for the cost of completion of the public street improvements, as provided herein; and

WHEREAS, the Developer has agreed to pay into the Pheasant Ridge Street Improvement Escrow Account the required estimated installment payments, as more particularly set forth in the Fourth Amendment, attached hereto as **Exhibit A** and incorporated herein by this reference; and

WHEREAS, the Developer has also agreed to pay the requisite Traffic Impact Fees for the Development; and

WHEREAS, payment of the Traffic Impact Fees and the installment payments referenced above shall be made at the issuance of, and as a condition precedent to, each building permit for the Property; and

WHEREAS, in order to facilitate the development of the Property and the construction of the remaining street improvements, which are essential to the City and the Subdivision, the Parties have agreed to modify the Pheasant Ridge Development Agreement as provided herein and attached hereto as **Exhibit A**; and.

WHEREAS, according to Land Use and Development Code, Section 17-40-220, Subdivision Agreement, Performance Bond, and Schedule of Improvements, of the Subdivision Regulations requires a subdivision agreement (a.k.a. development agreement) to be approved by the City Council by a Resolution; and

WHEREAS, the City Council of the City of Brighton, Colorado finds and declares that a Notice of Public Hearing is not required for consideration of an amendment to a development agreement amendment, according to the Land Use and Development Code; and

WHEREAS, the City Council of the City of Brighton, Colorado finds and declares that the provisions of the Fourth Amendment to the Pheasant Ridge Development Agreement are reasonable and are not detrimental to the future development of the area or to the health, safety, or welfare of the inhabitants of the City.

NOW THEREFORE, BE IT RESOLVED by the City of Brighton City Council as follows:

1. That the Fourth Amendment to the Pheasant Ridge Development Agreement, attached hereto as **Exhibit A**, and incorporated herein by this reference, is hereby approved.
2. That the Mayor is authorized to execute said Fourth Amendment on behalf of the City;
3. That the City Manager is authorized to undertake such tasks and execute such documents as may be required to implement and enforce the provisions of said Fourth Amendment.

RESOLVED, this 5th day of August 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

EXHIBIT A
Pheasant Ridge Development Agreement
Amendment No. 4

(Development Agreement Amendment begins on the next page)

**FOURTH (4TH) AMENDMENT
TO THE
PHEASANT RIDGE DEVELOPMENT AGREEMENT**

THIS IS AN AMENDMENT (the “Fourth Amendment”) to the existing Pheasant Ridge Development Agreement (the “Agreement”), entered into by and between the City of Brighton, a Colorado home rule municipality (“City”), and Montex Lands, Inc., a Colorado corporation (“Montex” or “Developer”), as follows:

RECITALS

WHEREAS, The Pheasant Ridge Development Agreement was originally approved on January 18, 2000 and recorded on March 13, 2000 in Adams County, Book 6061, Pages 591-635, Reception No. C0648991, by and between the City of Brighton (the “City”) and The Ryland Group, Inc., a Maryland Corporation (“Ryland”); the Agreement was thereafter subsequently amended, this being the Fourth Amendment;

WHEREAS, Montex (the “Developer”) is the successor in interest and in title to Ryland, and is, in all respects and for all purposes, the Developer under the Agreement, as amended, subject to any future assignment of Montex’s interests and obligations under this Agreement; and

WHEREAS, This Fourth Amendment relates to the Pheasant Ridge Subdivision (“Pheasant Ridge”), which was originally approved on January 18, 2000 by the Brighton City Council, and the Final Plat thereof recorded on March 13, 2000 in Adams County, File No. 18, Map No. 194, at Reception No. C0648992, and also the Pheasant Ridge Subdivision, Amended Plat No. 2 (“Pheasant Ridge 2nd Amendment”), which was approved on December 13, 2006 by the Community Development Director and recorded on December 18, 2006, in Adams County at Reception No. 2006001011114. For the purposes of this Fourth Amendment, the Pheasant Ridge Subdivision and the Pheasant Ridge 2nd Amendment, are collectively referred to as the “Subdivision;” and

WHEREAS, This Fourth Amendment relates specifically to the phasing, construction and payment for certain specific public improvements of the Subdivision, including: South 40th Avenue (Tower Road), Bridge Street, Southern Street, Estrella Street, and associated water, storm water and sewer improvements, for the remaining, unimproved real property within the Subdivision, described as follows (the “Property”):

Lots 1 through 10, Block 16, and
Lots 1 through 7, Block 21, and
Tract I, Tract J, and Tract K,
Pheasant Ridge Subdivision,
County of Adams,
State of Colorado;
and
Lots 1-56, Block 1,
Pheasant Ridge Subdivision, Amended Plat No. 2,
County of Adams,
State of Colorado

WHEREAS, Montex is the Developer and current owner of the Property, which Property comprises all of the remaining, unimproved real property within the Subdivision and is subject to the Agreement, as amended; and

WHEREAS, the phasing and construction plans of the original Agreement were drafted during an historic residential building expansion, and required the Developer, at its expense, to construct significant public improvements prior to any other construction within the last two (2) phases of the Subdivision (Phases 8 and 9); and

WHEREAS, Montex desires and intends to complete the construction and development in Phases 8 and 9, and also shall complete and/ or reimburse the City for the cost of completion of the public street improvements, as provided herein; and

WHEREAS, the Developer has agreed to pay into the Pheasant Ridge Street Improvement Escrow Account the required estimated installment payments, as more particularly set forth in the "*Street Improvement Escrow Agreement for the Public Improvements Specified in the Fourth Amendment to Pheasant Ridge Development*" attached hereto as **Exhibit B** and incorporated herein by this reference; and

WHEREAS, payment of the Traffic Impact Fees and the installment payments referenced above shall be made at the issuance of, and as a condition precedent to, each building permit for the Property; and

WHEREAS, in order to facilitate the development of the Property and the construction of the remaining street improvements, which are essential to the City and the Subdivision, the Parties have agreed to modify the Agreement as provided herein.

COVENANTS

NOW, THEREFORE, in consideration of the Agreement and the foregoing recitals, which are a substantive and enforceable part of this Fourth Amendment, and for the mutual promises and covenants set forth herein, and for other good and valuable consideration, the Parties agree as follows:

- A. Section No. 3, Construction of Tower Road, of Exhibit F, Special Provisions, of the Pheasant Ridge Development Agreement, dated January 18, 2000, shall be deleted in its entirety and replaced with the following Section:**

3. Tower Road (S. 40th Avenue).

(A) Montex and the City recognize and agree that the Agreement requires Montex, or the successor Developer, to construct and improve the west one-half of South 40th Avenue (Tower Road) as a minor arterial street consistent with the Final Road Construction Plans referenced in the Agreement. The Parties agree that the City will assume the responsibility for the construction and improvement of the west outside 12' travel lane, curb, gutter, and sidewalk of South 40th Avenue (Tower Road) at the sole cost of Developer as provided herein. The interior lane and center median shall be paid for from the Traffic Impact Fees paid to the City by the Developer. Developer agrees to pay into a separate account established by the City to be known as the Pheasant Ridge Street Improvement Escrow Account (hereinafter "Street Improvement Escrow Account"); as set forth in Section 13 of **Exhibit F, Special Provisions** of the Agreement as amended in Section C. below, the entire cost of constructing the west outside 12' travel lane, curb, gutter, and sidewalk of South 40th Avenue as a minor arterial street, including all required and necessary water, storm water and sanitary sewer utilities, one-quarter (1/4) of the cost of signalization (when warranted) and landscaping (including right-of-way landscaping and street trees), from the Bridge Street intersection on the north to the Southern Street intersection on the south, along the entire eastern boundary of the Subdivision, consistent with the City approved Final Road Construction Plans referenced in the Agreement.

(B) The City may construct an interim roadway along the north-south South 40th Avenue (Tower Road) alignment, from the Bridge Street intersection on the north to the Southern Street intersection on the south, adjacent to the eastern boundary of the Subdivision (the "Interim South 40th Avenue Roadway"). The Interim South 40th Avenue Roadway may consist of a rural 24-foot wide asphalt section, comprising two (2) travel lanes, to be installed as a portion of and consistent with the South 40th Avenue minor arterial cross-section. The Parties acknowledge that the Interim South 40th Avenue Roadway to be constructed by the City hereunder may not include (and

if constructed by the City, is not required to include) all required appurtenances of a minor arterial roadway, such as sidewalk(s), signalization, landscaping (including street tree landscaping and center median landscaping), curb and gutter, or center median improvements. The Interim South 40th Avenue Roadway shall be constructed substantially consistent with the Final Road Construction Plans referenced in the Agreement, as such Plans may be updated and revised by the City in connection herewith, such that the Interim South 40th Avenue Roadway may be utilized as part of the South 40th Avenue roadway. Should the actual cost of redesigning and constructing the Interim South 40th Avenue Roadway deviate from the cost estimates in **Exhibit A**, then subsequent installment payments may be increased or decreased and pro-rated accordingly by the City, to reflect the actual costs of design and construction.

(C) At the time of development of the Property, Montex, and its successor and/or assigns, may elect to construct the west one-half of South 40th Avenue as a minor arterial street, including travel lanes, curb and gutter, sidewalk, center median, signalization (when warranted) and landscaping (including right-of-way landscaping, street trees, and center median landscaping), from the Bridge Street intersection on the north to the Southern Street intersection on the south, along the entire eastern boundary of the Subdivision, consistent with the Final Road Construction Plans referenced in the Agreement. If such election is made, the City agrees that upon submission of proof of payment by Developer for such improvements, in whole or in part, approval of said costs by the City, and inspection and acceptance of the completed improvements by the City, disbursement of escrowed funds from the Street Improvement Escrow Account for the outside 12' travel lane, curb, gutter, and sidewalk (including right of way landscaping and street trees) may be made in an amount not to exceed the sum of payments made by Developer for the South 40th Avenue improvements. Disbursement of funds from the Traffic Impact Fee Fund for the interior 12' travel lane, curb, gutter and center median (including center median landscaping) may be made upon approval of said costs by the City, and inspection and acceptance of the completed improvements by the City. In addition, Developer may request, subject to the City's sole discretion, to substitute an acceptable Improvement Guarantee as provided in Sections 1.11 and 9.1 of the Agreement for the funds escrowed for construction and improvement of South 40th Avenue (Tower Road) as a minor arterial street. Upon completion of South 40th Avenue as a minor arterial street and the improvements constructed by Developer and by the City, the City shall cease to collect the installment escrow payments required by Section 13(B) of **Exhibit F** of the Agreement specified below for the improvements for South 40th Avenue as a minor arterial. The City shall continue to collect the escrow amounts for the City's construction of the Interim South 40th Avenue Roadway and for Southern

Street as provided herein. Nothing herein shall be deemed to release Developer from the requirement to pay the Traffic Impact Fees as required.

B. Section 5, Telluride and Southern, in Exhibit F, Special Provisions, of the Pheasant Ridge Development Agreement, dated January 18, 2000, shall be deleted in its entirety and replaced with the following Section:

5. Telluride and Southern

(A) The City agrees that Telluride Street has been constructed and accepted by the City and there are no further requirements on Developer related to Telluride.

(B) Developer and the City recognize and agree that the Agreement requires Montex, or the successor Developer, to construct and improve Southern Street, from the South 40th Avenue intersection to the Telluride Street intersection, as a rural street section (no curb and gutter) consistent with the City's specifications and standards as the same may be amended from time to time. The Parties agree that the City will assume the responsibility for the construction and improvement of that portion of Southern Street at the sole cost of Developer as provided herein. Developer agrees to pay into the Street Escrow Account as set forth in Section 13(B) of **Exhibit F** of the Agreement below, the entire cost of constructing the improvements of Southern Street consistent with the City's specifications and standards. Should the actual cost of redesigning and constructing the Southern Street roadway deviate from the cost estimates in **Exhibit A**, then subsequent installment payments may be increased or decreased and pro-rated accordingly by the City, to reflect the actual costs of construction.

C. The following language shall be inserted as a new section, Section 13, in Exhibit F, Special Provisions, of the Pheasant Ridge Development Agreement, dated January 18, 2000:

13. Street Improvement Escrow Agreement.

(A) **Traffic Impact Fees.** Developer shall pay to the City the total amount of Traffic Impact Fees required per unit at the time of application of each building permit. Such payment is a condition precedent to the issuance of the building permit. The City of Brighton Fee Resolution in effect at the time of payment shall determine the amount of the Traffic Impact Fee to be paid.

(B) In addition to the Traffic Impact Fees, Developer agrees to pay into the Street Improvement Escrow Account, (i) the cost of constructing the west outside 12' travel lane, curb, gutter, and sidewalk (including right of way landscaping and street trees) of South 40th Avenue (Tower Road) as a minor arterial street as provided

above, and (ii) the costs of constructing the Southern Street improvements, all consistent with the Final Road Construction Plans referenced in the Agreement, as such Plans may be updated and revised by the City. The escrow amounts shall be paid to the City in installments, as the Property is developed by Montex and its successors, assigns, and/or affiliates.

The amount of each installment payment is based on the estimated costs of redesigning and constructing South 40th Avenue (Tower Road) as a minor arterial street, the Interim South 40th Avenue, and the Southern Street improvements, divided by the planned total number of single-family detached lots, single-family attached square footage, and commercial square footage proposed to be built within the Property, as represented on the approved Final Plat. The estimated costs of constructing South 40th Avenue (Tower Road), the Interim South 40th Avenue, and Southern Street are set forth in **Exhibit A**, attached hereto, but such amounts are estimates only.

The installment payment amounts are broken-down per residential lot for single-family detached products, and per square foot for single-family attached and for commercial lots as demonstrated in **Exhibit A**. Developer shall pay the remaining balance of such installment payments, in good and immediately available funds, upon the sale or assignment of any parcel or parcels of the Property to a successor developer, unless the successor developer assumes the payments of the escrow amounts in writing. In addition, to the extent not previously paid, Developer shall pay such installment payments, in good and immediately available funds, at the time of building permit issuance and the City shall not be obligated to issue any building permit for any part of the Property, until such payments are delivered. In the event of a sale of any part of the Property and upon payment of the remaining balance of such installment payments for that part of the Property, that part shall be released from any further financial requirements of this Agreement ("Partial Release") and a document showing that Partial Release may be recorded, at the Developer's expense, with the County Clerk's Office.

(C) **Payment Security; Reimbursement Lien.** The terms and provisions of this Fourth Amendment shall run with the land and shall bind the Property, until the Developer's full performance hereunder and under the Agreement, as amended, and subject to the Partial Release per Section C.13.(B) of this Agreement.

(D) **Interest on Reimbursement Balance.** On or about the 30th of December of each year, in perpetuity, until the reimbursement payments owed by the Developer are paid in full, the balance of the reimbursement owed by the Developer, for the construction of South 40th Avenue, Interim South 40th Avenue Roadway and Southern

Street by the City, shall be subject to a 2.25% per annum simple interest rate. The reimbursement balance shall be determined by subtracting the total amount of reimbursement payments paid by the Developer during a given year, from the remaining balance of the actual cost of constructing South 40th Avenue, Interim South 40th Avenue Roadway and Southern Street by the City. The Interest on the Reimbursement Balance shall be charged to the Street Improvement Escrow Account each year, and will be offset against Interest Earnings in this account.

D. Section No. 4, Bridge Street from Telluride to Tower, of Exhibit F, Special Provisions, of the Pheasant Ridge Development Agreement, dated January 18, 2000, shall be deleted in its entirety and replaced with the following Section:

4. The Developer is responsible for constructing a one-half street section of Bridge Street, as shown on the Final Road Construction Plans referenced in the Agreement, at its sole cost and expense. The Developer shall at its expense construct and improve the southern one-half of Bridge Street abutting a portion of Tract I, and Tracts J and K of the Property from Telluride on the west to the South 40th Avenue (Tower Road) intersection on the east, according to the Final Road Construction Plans referenced in the Agreement. The Developer shall complete such construction, subject to Construction Acceptance by the City as provided in Section 1.6 of the Agreement, prior to the earlier to occur of the issuance of the first Certificate of Occupancy (CO) within Tract K (the commercial property) or Tract J (the single-family attached property). The Developer shall submit to the City an Improvement Guarantee satisfactory to the City for the improvements to Bridge Street as provided in Section 1.11 and 9.1 of the Agreement.

E. The following language shall be inserted as a new section, Section 14, in Exhibit F, Special Provisions, of the Pheasant Ridge Development Agreement, dated January 18, 2000:

14. Estrella Street Construction. Developer shall, at its expense, complete the full construction and improvement of Estrella Street, from the Cerillos Street intersection on the west to the Interim South 40th Avenue (Tower Road) intersection on the east, consistent with the Final Road Construction Plans referenced in the Agreement. Developer shall complete the construction of Estrella Street, subject to Construction Acceptance by the City as provided in Section 1.6 of the Agreement prior to, and as a condition precedent to, the issuance of a Certificate of Occupancy for the first single-family detached permit that is issued after commencement of the Interim South 40th Avenue Roadway construction by the City. The City shall have no obligation to issue any such Certificate of Occupancy prior to the City's final acceptance of the construction and improvement of Estrella Street. The City agrees

that Developer shall not be required to complete the construction and improvement of Estrella Street until the City or any other party has commenced construction of the Interim South 40th Avenue or South 40th Avenue as a minor arterial street. The above does not absolve the responsibility of the Developer to submit to the City an Improvement Guarantee satisfactory to the City for the improvements to Estrella Street as provided in Section 1.11 and 9.1 of the Agreement. Said Improvement Guarantee shall remain in full force and effect until the construction of Estrella Street is complete and Final Accepted by the City.

- F. All references to Montex and/or the Developer shall mean Montex Lands, Inc. and its successors, assigns, and/or affiliates. The obligations of Montex may be assigned to one (1) or more purchasers of all or a portion of the Property upon consent of the City, which consent shall not be unreasonably withheld. All references to the Agreement shall include all amendments.
- G. Except as set forth herein, this Fourth Amendment shall not otherwise modify or change the existing Agreement, as previously amended; all remaining provisions of the Agreement, as amended, including Exhibit F, not specifically modified herein by this Fourth Amendment, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment to the Pheasant Ridge Development Agreement this ____ day of _____, 2014.

By: _____
Robin D. Lang, President
Montex Lands, Inc.
5815 Gulfton Street
Houston, TX 77081

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Robin D. Lang, the President of Montex Lands, Inc.

WITNESS my hand and official seal:

My commission expires: _____

By: Richard N. McLean, Mayor

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

EXHIBIT A

ESTIMATED COST OF CONSTRUCTION

[Estimated Cost of Construction begins on the next page]

EXHIBIT A

Summary Table (Costs broken down on following pages):

Description	Estrella Street	Bridge Street	Ultimate S. 40th Ave	Total By Developer	Interim S. 40th Ave	Southern Street	Total by Brighton
Funded by Escrow Account	\$0	\$0	\$790,561	\$790,561	\$447,758	\$455,105	\$902,863
Funded by Traffic Impact Fees	\$0	\$0	\$56,363	\$56,363	\$134,806	\$0	\$134,806
Total Cost of Improvements	\$120,777	\$299,292	\$846,924	\$1,266,992	\$582,563	\$455,105	\$1,037,668

Amount to be Escrowed	
Description	Amount
S. 40th Ave (Interim)	\$447,758
S. 40th Ave (Ultimate)	\$790,561
Southern Street	\$455,105
Total	\$1,693,424

**Estrella Street and Bridge Street are to be constructed by Developer per paragraphs B and D of this agreement.

Summary of Escrow Schedule amounts		
Description	Escrow	
SF Attached	\$0.23	per sf of land
SF Detached	\$2,473.60	per lot
Commercial	\$3.27	per sf of land

Single Family (SF) Attached Area = 8.899 acres = 387,640 square feet

Single Family (SF) Detached Lots = 73 lots

Commercial Area = 10.00 Acres = 435,600 square feet

Escrow Schedule					
Interim S. 40th Avenue					
Number	Description	Share	Escrow		Total
387,640	SF Attached	10%	\$0.12	per sf of land	\$44,775.77
73	SF Detached	20%	\$1,226.73	per lot	\$89,551.54
435,600	Commercial	70%	\$0.72	per sf of land	\$313,430.40
					\$447,757.72
Ultimate S. 40th Avenue					
Number	Description	Share	Escrow		Total
387,640	SF Attached	0%	\$0.00	per sf of land	\$0.00
73	SF Detached	0%	\$0.00	per lot	\$0.00
435,600	Commercial	100%	\$1.81	per sf of land	\$790,561.12
					\$790,561.12
Southern Street					
Number	Description	Share	Escrow		Total
387,640	SF Attached	10%	\$0.12	per sf of land	\$45,510.50
73	SF Detached	20%	\$1,246.86	per lot	\$91,021.00
435,600	Commercial	70%	\$0.73	per sf of land	\$318,573.50
					\$455,105.00

Estrella Street

DESCRIPTION	QUANTITY	UNIT	PRICE UNIT	TOTAL COST
SOILS REPORTS & TESTING				
MISC/CONCRETE TESTING/REPORTS	1	LS	\$7,000.00	\$7,000.00
SUBTOTAL				\$7,000.00
ENGINEERING				
CONTRACT/CONSTRUCTION SURVEYING	1	LS	\$2,500.00	\$2,500.00
SUBTOTAL				\$2,500.00
TOTAL SOFT COSTS				\$9,500.00
GRADING				
STRIP TOPSOIL 4" STOCKPILE	560	CY	\$1.00	\$560.00
REPLACE TOPSOIL	560	CY	\$1.05	\$588.00
CUT, FILL, & COMPACT LOTS	3,500	CY	\$1.50	\$5,250.00
Subtotal				\$6,398.00
MISC/GRADING PERMIT FEE (1%)	1	LS	\$639.80	\$639.80
SUBTOTAL				\$7,037.80
EROSION CONTROL				
VEHICLE TRACKING PAD	1	EA	\$1,200.00	\$1,200.00
HYDROSEEDING-DIST. AREAS	1	AC	\$900.00	\$900.00
FABRIC SILT FENCE	1,500	LF	\$1.50	\$2,250.00
SUBTOTAL				\$4,350.00
ELECTRIC				
STREET LIGHTS	3	EA	\$1,000.00	\$3,000.00
SUBTOTAL				\$3,000.00
OTHER UTILITIES				
SLEEVE CROSSINGS-4/4' PVC @70'	10	EA	\$70.00	\$700.00
SUBTOTAL				\$700.00
STREETS-C&G-PUBLIC				
FINE GRADE C & G	450	LF	\$0.75	\$337.50
6" VERTICAL CURB	450	LF	\$8.59	\$3,865.50
SIDEWALK - 6" THICK	2,250	SF	\$2.62	\$5,895.00
FINE GRADE WALKS	2,250	SF	\$0.30	\$675.00
HANDICAP RAMPS	1	EA	\$1,090.00	\$1,090.00
Subtotal				\$11,863.00
MISC (1%)	1		\$1,186.30	\$1,186.30
SUBTOTAL				\$13,049.30
STREETS-PAVING-PUBLIC				
SUBGRADE PREP	15,490	SF	\$0.15	\$2,323.50
6" COMP DEPTH ACS	15,490	SF	\$2.04	\$31,599.60
12" LIME SUBBASE STABILIZATION	23,000	SF	\$0.93	\$21,390.00
Subtotal				\$55,313.10
MISC (1%)	1		\$5,531.31	\$5,531.31
SUBTOTAL				\$60,844.41
TRAFFIC SIGNALIZATION				
PAVEMENT STRIPING/MARKING	150	LF	\$3.00	\$450.00
STOP & TRAFFIC SIGNS	2	EA	\$250.00	\$500.00
Subtotal				\$950.00
MISC	1	LS	\$95.00	\$95.00
SUBTOTAL				\$1,045.00
CURB & GUTTER REPAIRS				
COST TO COMPLETE	1	LS	\$2,500.00	\$2,500.00
SUBTOTAL				\$2,500.00
PAVING REPAIRS				
COST TO COMPLETE	1	LS	\$2,500.00	\$2,500.00
Subtotal				\$2,500.00
MISC (10%)	1		\$250.00	\$250.00
SUBTOTAL				\$2,750.00
MISCELLANEOUS				
FINISH & CLEANUP	1	LS	\$8,000.00	\$8,000.00
MISC CONTINGENCY	1		\$8,000.00	\$8,000.00
SUBTOTAL				\$16,000.00
TOTAL				\$120,776.51

Bridge Street Widening

DESCRIPTION	QUANTITY	UNIT	PRICE UNIT	TOTAL COST
SOILS REPORTS & TESTING MISC/CONCRETE TESTING/REPORTS	1	LS	\$10,000.00	\$10,000.00
SUBTOTAL				\$10,000.00
ENGINEERING CONTRACT/CONSTRUCTION SURVEYING	1	LS	\$8,500.00	\$8,500.00
MISCELLANEOUS	1	LS	\$850.00	\$850.00
SUBTOTAL				\$9,350.00
TOTAL SOFT COSTS				\$19,350.00
GRADING STRIP TOPSOIL 4" STOCKPILE	560	CY	\$1.00	\$560.00
REPLACE TOPSOIL	560	CY	\$1.05	\$588.00
CUT, FILL, & COMPACT LOTS	3,500	CY	\$1.50	\$5,250.00
DEMOLITION STRUCTURES/FOUND.		LS	\$5,000.00	\$5,000.00
Subtotal				\$11,398.00
MISC/GRADING PERMIT FEE (10%)			\$1,139.80	\$1,139.80
SUBTOTAL				\$12,537.80
EROSION CONTROL VEHICLE TRACKING PAD	1	EA	\$1,200.00	\$1,200.00
HYDROSEEDING-DIST. AREAS	1	AC	\$900.00	\$900.00
FABRIC SILT FENCE	1,500	LF	\$1.50	\$2,250.00
SUBTOTAL				\$4,350.00
OTHER UTILITIES SLEEVE CROSSINGS-4/4' PVC @65'	1	EA	\$1,500.00	\$1,500.00
SUBTOTAL				\$1,500.00
STREETS-C&G-PUBLIC FINE GRADE C & G	1,360	LF	\$0.75	\$1,020.00
6" VERTICAL CURB	1,360	LF	\$8.59	\$11,682.40
8' WIDE SIDEWALK - 6" THICK	1,450	LF	\$20.96	\$30,392.00
FINE GRADE WALKS	1,450	SF	\$0.75	\$1,087.50
HANDICAP RAMPS	2	EA	\$1,090.00	\$2,180.00
Subtotal				\$46,361.90
MISC	1	LS	\$4,636.19	\$4,636.19
SUBTOTAL				\$50,998.09
STREETS-PAVING-PUBLIC SUBGRADE PREP	33,560	SF	\$0.15	\$5,034.00
SAW CUT ASPHALT	1,500	LF	\$2.00	\$3,000.00
10" COMP DEPTH ACS	33,560	SF	\$3.40	\$114,104.00
Subtotal				\$122,138.00
MISC	1	LS	\$12,213.80	\$12,213.80
SUBTOTAL				\$134,351.80
TRAFFIC SIGNALIZATION PAVEMENT STRIPING/MARKING	6,000	LF	\$0.34	\$2,040.00
STOP & TRAFFIC SIGNS	8	EA	\$350.00	\$2,800.00
TRAFFIC SIGNAL	0.25	EA	\$180,000.00	\$45,000.00
Subtotal				\$49,840.00
MISC	1	LS		\$4,984.00
SUBTOTAL				\$54,824.00
CURB & GUTTER REPAIRS COST TO COMPLETE	1	LS	\$6,000.00	\$6,000.00
Subtotal				\$6,000.00
MISC (10%)	1	LS		\$600.00
SUBTOTAL				\$6,600.00

Bridge Street Widening, continued

DESCRIPTION	QUANTITY	UNIT	PRICE UNIT	TOTAL COST
PAVING REPAIRS				
COST TO DATE		LS		\$0.00
COST TO COMPLETE	1	LS	\$6,000.00	\$6,000.00
Subtotal				\$6,000.00
MISC (10%)	1	LS		\$600.00
SUBTOTAL				\$6,600.00
MISCELLANEOUS				
FINISH & CLEANUP	1	LS	\$3,000.00	\$3,000.00
MISC CONTINGENCY	1	LS	\$5,000.00	\$5,000.00
SUBTOTAL				\$8,000.00
TOTAL				\$299,111.69

TOWER ROAD by Developer

DESCRIPTION	QUANTITY	UNIT	PRICE UNIT	TOTAL COST
PERMITS & FEES				
GOVERNMENTAL FEES/PERMITS	1	LS	\$15,000.00	\$15,000.00
CONSTRUCTION INSPECTION FEES	1	LS	\$15,000.00	\$15,000.00
CONSTRUCTION MANAGEMENT FEE (10%)	1	LS	\$5,000.00	\$5,000.00
SUBTOTAL				\$35,000.00
SOILS REPORTS & TESTING				
MISC/CONCRETE TESTING/REPORTS	1	LS	\$25,000.00	\$25,000.00
SUBTOTAL				\$25,000.00
ENGINEERING				
CONTRACT/CONSTRUCTION SURVEYING	1	LS	\$20,000.00	\$20,000.00
MISCELLANEOUS	1	LS	\$3,500.00	\$3,500.00
SUBTOTAL				\$23,500.00

TOTAL SOFT COSTS

\$83,500.00

GRADING				
STRIP TOPSOIL 4"/STOCKPILE	3,500	CY	\$1.00	\$3,500.00
REPLACE TOPSOIL	1,000	CY	\$1.05	\$1,050.00
Subtotal				\$4,550.00
MISC/GRADING PERMIT FEE	1	LS	\$455.00	\$455.00
SUBTOTAL				\$5,005.00
EROSION CONTROL				
VEHICLE TRACKING PAD	2	EA	\$1,200.00	\$2,400.00
INLET PROTECTION	8	EA	\$1,000.00	\$8,000.00
FABRIC SILT FENCE	12,000	LF	\$2.00	\$24,000.00
Subtotal				\$34,400.00
MISC/EX.FENCE/CULVERT/ROAD	1	LS	\$3,440.00	\$3,440.00
SUBTOTAL				\$37,840.00
STORM SEWER				
18" RCP	350	LF	\$38.90	\$13,615.00
24" RCP	100	LF	\$53.70	\$5,370.00
36" RCP	800	LF	\$80.40	\$64,320.00
48" RCP	950	LF	\$120.50	\$114,475.00
5'-0 DIA. MANHOLE	12	EA	\$2,822.00	\$33,864.00
TYPE R INLET-5' L	4	EA	\$3,290.00	\$13,160.00
TYPE R INLET-10' L	4	EA	\$4,825.00	\$19,300.00
MH ADJUSTMENTS	12	EA	\$550.00	\$6,600.00
Subtotal				\$270,704.00
MISC/MOBILIZATION		LS		\$27,070.40
SUBTOTAL				\$297,774.40
OTHER UTILITIES				
SLEEVE CROSSINGS-4/4' PVC @65'	2	EA	\$1,200.00	\$2,400.00
SUBTOTAL				\$2,400.00

TOWER ROAD by Developer, continued

DESCRIPTION	QUANTITY	UNIT	PRICE UNIT	TOTAL COST
STREETS-C&G-PUBLIC				
FINE GRADE C & G	2,250	LF	\$0.75	\$1,687.50
6" VERTICAL CURB (30")	2,250	LF	\$8.59	\$19,327.50
8' WIDE SIDEWALK - 6" THICK	2,250	LF	\$20.96	\$47,160.00
HANDICAP RAMPS	4	EA	\$1,090.00	\$4,360.00
6" MEDIAN CURB (18") *	2,250	LF	\$8.47	\$19,057.50
MISC/MOBILIZATION	1	LS	\$20,000.00	\$20,000.00
SUBTOTAL				\$111,592.50
STREETS-PAVING-PUBLIC				
MISC/MOBILIZATION	1	LS	\$10,000.00	\$10,000.00
SUBTOTAL				\$10,000.00
TRAFFIC SIGNALIZATION				
PAVEMENT STRIPING/MARKING **	7,680	LF	\$0.34	\$2,611.20
STOP & TRAFFIC SIGNS	24	EA	\$350.00	\$8,400.00
TRAFFIC SIGNAL	0.50	EA	\$180,000.00	\$90,000.00
Subtotal				\$101,011.20
MISC	1	LS	\$1,000.00	\$10,101.12
SUBTOTAL				\$111,112.32
CURB & GUTTER REPAIRS				
COST TO COMPLETE	1	LS	\$20,000.00	\$20,000.00
Subtotal				\$20,000.00
MISC (10%)	1	LS	\$2,000.00	\$2,000.00
SUBTOTAL				\$22,000.00
PAVING REPAIRS				
COST TO COMPLETE	1	LS	\$20,000.00	\$20,000.00
Subtotal				\$20,000.00
MISC (10%)	1	LS	\$2,000.00	\$2,000.00
SUBTOTAL				\$22,000.00
LANDSCAPING				
TOWER RD R/W	20,250	SF	\$2.00	\$40,500.00
FULL MEDIAN-NATIVE SEED *	36,000	SF	\$1.00	\$36,000.00
SUBTOTAL				\$76,500.00
MISCELLANEOUS				
FINISH & CLEANUP	1	LS	\$10,000.00	\$10,000.00
WOOD PRIVACY FENCE	1,600	LF	\$24.50	\$39,200.00
MISC CONTINGENCY	1	LS	\$10,000.00	\$10,000.00
SUBTOTAL				\$59,200.00
MOBILIZATION	1	LS	\$8,000.00	\$8,000.00
TOTAL				\$846,924.22

* Part of inside lane and median work

** 3,840 LF of PAVEMENT STRIPING/MARKING for outside lane work, 3,840 LF for interior lane work

TOWER ROAD by Brighton

DESCRIPTION	QUANTITY	UNIT	PRICE UNIT	TOTAL COST
SOILS REPORTS & TESTING				
MISC/CONCRETE TESTING/REPORTS	1	LS	\$15,000.00	\$15,000.00
SUBTOTAL				\$15,000.00
ENGINEERING				
CONTRACT/CONSTRUCTION SURVEYING	1	LS	\$15,000.00	\$15,000.00
MISCELLANEOUS	1	LS	\$3,500.00	\$3,500.00
SUBTOTAL				\$18,500.00

TOTAL SOFT COSTS

\$33,500.00

GRADING				
STRIP TOPSOIL 4"/STOCKPILE	7,000	CY	\$1.00	\$7,000.00
REPLACE TOPSOIL	5,000	CY	\$1.05	\$5,250.00
CUT, FILL, & COMPACT LOTS	55,000	CY	\$1.50	\$82,500.00
HAUL & STOCKPILE EXCESS MAT	10,000	CY	\$1.00	\$10,000.00
Subtotal		CY		\$104,750.00
MISC/GRADING PERMIT FEE (1%)	1	LS	\$10,475.00	\$10,475.00
SUBTOTAL				\$115,225.00
EROSION CONTROL				
VEHICLE TRACKING PAD	2	EA	\$1,200.00	\$2,400.00
INLET PROTECTION	3	EA	\$1,000.00	\$3,000.00
FABRIC SILT FENCE	5,280	LF	\$2.00	\$10,560.00
Subtotal				\$15,960.00
MISC/EX.FENCE/CULVERT/ROAD (1%)	1	LS	\$1,596.00	\$1,596.00
SUBTOTAL				\$17,556.00
STORM SEWER				
18" RCP	100	LF	\$38.90	\$3,890.00
24" RCP	100	LF	\$53.70	\$5,370.00
36" RCP	100	LF	\$80.40	\$8,040.00
48" RCP	0	LF	\$120.50	\$0.00
18" FES	2	EA	\$300.00	\$600.00
24" FES	2	EA	\$400.00	\$800.00
36" FES	2	EA	\$500.00	\$1,000.00
Subtotal				\$19,700.00
MISC/MOBILIZATION (1%)		LS		\$1,970.00
SUBTOTAL				\$21,670.00
ELECTRIC				
STREET LIGHTS	26	EA	\$2,000.00	\$52,000.00
SUBTOTAL				\$52,000.00
OTHER UTILITIES				
SLEEVE CROSSINGS-4/4' PVC @65'	10	EA	\$1,200.00	\$12,000.00
SUBTOTAL				\$12,000.00

TOWER ROAD by Brighton, continued

DESCRIPTION	QUANTITY	UNIT	PRICE UNIT	TOTAL COST
STREETS-PAVING-PUBLIC				
SUBGRADE PREP *	80,000	SF	\$0.15	\$12,000.00
10" COMP DEPTH ACS **	75,000	SF	\$3.40	\$255,000.00
MISC/MOBILIZATION	1	LS	\$2,500.00	\$2,500.00
SUBTOTAL				\$269,500.00
TRAFFIC SIGNALIZATION				
PAVEMENT STRIPING/MARKING ***	7,680	LF	\$0.34	\$2,611.20
STOP & TRAFFIC SIGNS	24	EA	\$350.00	\$8,400.00
Subtotal				\$11,011.20
MISC	1	LS	\$1,000.00	\$1,101.12
SUBTOTAL				\$12,112.32
PAVING REPAIRS				
COST TO COMPLETE	1	LS	\$10,000.00	\$10,000.00
Subtotal				\$10,000.00
MISC (10%)	1	LS	\$1,000.00	\$1,000.00
SUBTOTAL				\$11,000.00
MISCELLANEOUS				
FINISH & CLEANUP	1	LS	\$15,000.00	\$15,000.00
MISC CONTINGENCY	1	LS	\$15,000.00	\$15,000.00
SUBTOTAL				\$30,000.00
MOBILIZATION	1	LS	\$8,000.00	\$8,000.00
TOTAL				\$582,563.32

* 40,000 SF of SUBGRADE PREP for outside lane, 40,000 SF for interior lane

** 37,500 SF of 10" COMP DEPTH ACS for outside lane, 37,500 for interior lane

*** 3,840 LF of PAVEMENT STRIPING/MARKING for outside lane, 3,840 for interior lane

SOUTHERN STREET by Brighton

ITEM	QUANTITY UNIT	PRICE UNIT	TOTAL COST
SOILS REPORTS & TESTING			
FINAL SOILS TESTING/REPORTS	8.00 UNIT	300.00	2,400.00
FILL CONTROL/RECOMPACT OVER-EX	8.00 UNIT	350.00	2,800.00
UTILITY TRENCH COMPACTION	8.00 UNIT	350.00	2,800.00
PAVEMENT DESIGN	8.00 UNIT	350.00	2,800.00
SUBGRADE COMPACTION	8.00 UNIT	625.00	5,000.00
MISC/CONCRETE TESTING/REPORTS	8.00 UNIT	200.00	1,600.00
SUBTOTAL			17,400.00
ENGINEERING			
CONTRACT/DESIGN/FINAL PLAT & MTGS	2.00 UNIT	2,500.00	5,000.00
CONTRACT/CONSTRUCTION SURVEYING	2.00 UNIT	1,000.00	2,000.00
VERIFY GRADING TEMPLATE-2 STAGE	2.00 UNIT	250.00	500.00
ADDITIONAL SERVICES/EXTRAS/CO'S	2.00 UNIT	550.00	1,100.00
PRINTS/REPRODUCT/REIMBURSIBLES	2.00 UNIT	250.00	500.00
MISCELLANEOUS	2.00 UNIT	550.00	1,100.00
SUBTOTAL			10,200.00

TOTAL SOFT COSTS

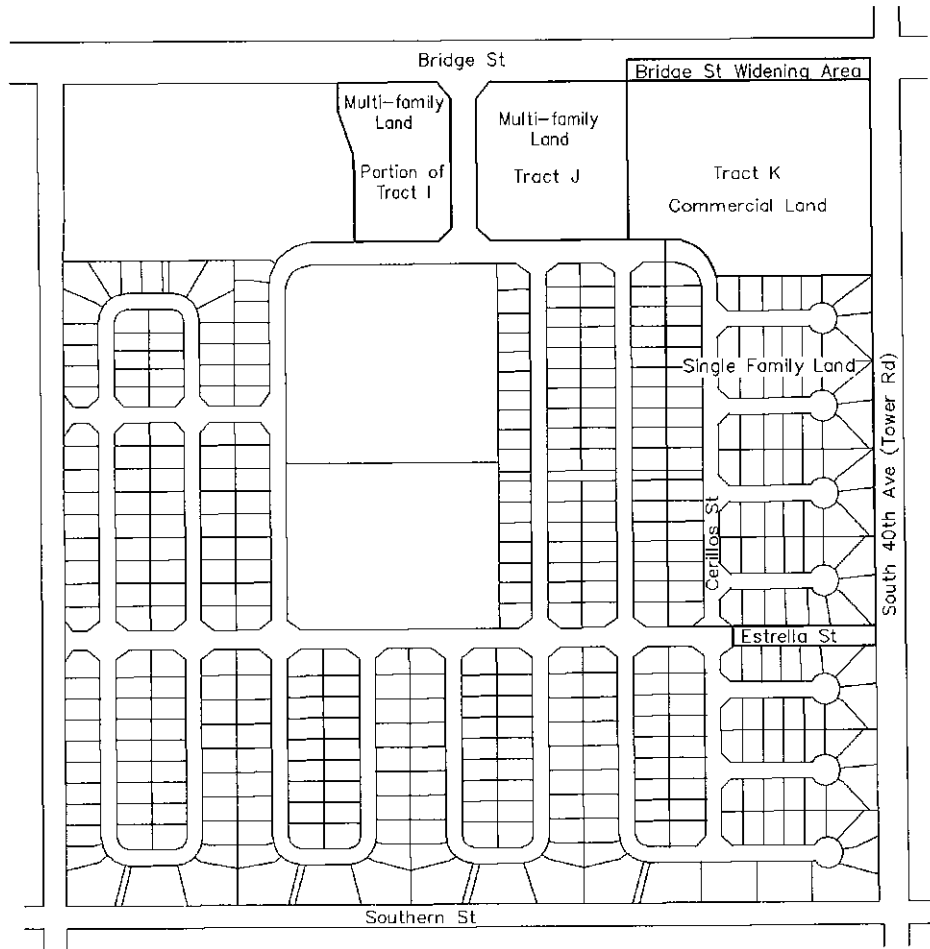
27,600.00

GRADING			
STRIP TOPSOIL 4"/STOCKPILE	2,000.00 CY	1.50	3,000.00
REPLACE TOPSOIL	1,000.00 CY	1.25	1,250.00
Cut from Existing to Stockpile	7,500.00 CY	2.00	15,000.00
Load to Truck	7,500.00 CY	1.00	7,500.00
Haul Offsite	7,500.00 CY	4.00	30,000.00
MISC/GRADING PERMIT FEE	2.00 UNIT	700.00	1,400.00
SUBTOTAL			58,150.00
EROSION CONTROL			
VEHICLE TRACKING PAD	2.00 EA	2,000.00	4,000.00
SEDIMENTATION TRAP	1.00 LS	3,000.00	3,000.00
INLET PROTECTION	1.00 EA	1,500.00	1,500.00
HYDROSEEDING-DIST. AREAS	1.60 AC	850.00	1,360.00
FABRIC SILT FENCE	5,280.00 LF	2.50	13,200.00
SWMPP & Maintenance	2.00 UNIT	750.00	1,500.00
MISC/EX.FENCE/CULVERT/ROAD	2.00 UNIT	250.00	500.00
SUBTOTAL			25,060.00
STORM SEWER			
MISC/PLUGS/REMOVE CULVERTS	2.00 UNIT	150.00	300.00
SUBTOTAL			300.00
SANITARY SEWER			
MISC/CONNECT TO EXISTING	2.00 UNIT	500.00	1,000.00
SUBTOTAL			1,000.00

SOUTHERN STREET by Brighton, continued

ITEM	QUANTITY	UNIT	PRICE UNIT	TOTAL COST
WATER MAIN MISC	2.00	UNIT	1,000.00	2,000.00
SUBTOTAL				2,000.00
WATER SERVICE MISC	2.00	UNIT	150.00	300.00
SUBTOTAL				300.00
GAS MISC	2.00	UNIT	500.00	1,000.00
SUBTOTAL				1,000.00
ELECTRIC TRENCHING/SLEEVES(SEE JOINT UTILITIES)	2.00	UNIT	500.00	1,000.00
STREET LIGHTS-REFUNDABLE	4.00	EA	2,000.00	8,000.00
SUBTOTAL				9,000.00
TELEPHONE TRENCHING/SLEEVES	2.00	UNIT	500.00	1,000.00
SUBTOTAL				1,000.00
STREETS-C&G-PUBLIC SIDEWALK-6" THICK	22,000.00	SF	2.62	57,640.00
FINE GRADE WALKS	22,000.00	SF	0.30	6,600.00
MISC	2.00	UNIT	1,500.00	3,000.00
SUBTOTAL				67,240.00
STREETS-PAVING-PUBLIC Balance	69,000.00	SF	0.05	3,450.00
SUBGRADE PREP	69,000.00	SF	0.15	10,350.00
SAW CUT ASPHALT	100.00	LF	2.00	200.00
6" COMP DEPTH ACS	69,000.00	SF	2.04	140,760.00
LIME SUBBASE STABILIZATION	74,000.00	SF	0.93	68,820.00
MISC	2.00	UNIT	3,500.00	7,000.00
SUBTOTAL				230,580.00
TRAFFIC SIGNALIZATION Pavement Marking	4.00	EA	50.00	200.00
STOP & TRAFFIC SIGNS	8.00	EA	250.00	2,000.00
Pavement Striping	2,875.00	LF	3.00	8,625.00
SUBTOTAL				10,825.00
CURB & GUTTER REPAIRS COST TO COMPLETE	2.00	UNIT	1,200.00	2,400.00
SUBTOTAL				2,400.00
PAVING REPAIRS COST TO COMPLETE	2.00	UNIT	1,200.00	2,400.00
SUBTOTAL				2,400.00
MISCELLANEOUS FINISH & CLEANUP	2.00	UNIT	625.00	1,250.00
MISC CONTINGENCY	2.00	UNIT	2,000.00	4,000.00
SUBTOTAL				5,250.00
MOBILIZATION	1.00	LS	11,000.00	11,000.00
TOTAL				\$455,105.00

Pheasant Ridge Subdivision



Not To Scale

EXHIBIT B

STREET IMPROVEMENT ESCROW AGREEMENT

[Street Improvement Escrow Agreement for the Public Improvements Specified in the Fourth Amendment to Pheasant Ridge Development begins on the next page.]

**STREET IMPROVEMENT
ESCROW AGREEMENT FOR
THE PUBLIC IMPROVEMENTS SPECIFIED
IN THE FOURTH AMENDMENT TO
PHEASANT RIDGE DEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into this ____ day of _____, 2014 by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality organized and existing under the laws of the State of Colorado (hereinafter "CITY") and MONTEX LANDS, INC., a Colorado Corporation (hereinafter "MONTEX or DEVELOPER").

RECITALS

WHEREAS, The City Council of the City of Brighton adopted Resolution 14-____ on _____, 2014 approving the Fourth (4th) Amendment to the Pheasant Ridge Development Agreement (the "Agreement") dated January 18, 2000 regarding the phasing, construction and payment for certain public improvements to be constructed for the remaining, unimproved real property within the Pheasant Ridge Development including: South 40th Avenue (Tower Road), Bridge Street, Southern Street, Estrella Street and associated utility improvements; and

WHEREAS, Montex and the City recognize and agree that the Agreement requires Montex as the successor Developer, or any successor Developer (the "Developer") to construct and improve the west one-half of South 40th Avenue (Tower Road) as a minor arterial street consistent with the Final Road Construction Plans referenced in the Agreement. The Parties agree that the City will assume the responsibility for the construction and improvement of the west outside 12' travel lane, curb, gutter, and sidewalk of South 40th Avenue (Tower Road) at the sole cost of Developer to be paid from funds paid into the Street Improvement Escrow Account as herein set forth; and

WHEREAS, Developer and the City recognize and agree that the Agreement requires Developer to construct and improve Southern Street as a rural street section (no curb and gutter) from Tower Road (S. 40th Avenue) to Telluride Street (S. 35th Avenue), consistent with the City's specifications and standards as the same may be amended from time to time. The Parties agree that the City will assume the responsibility for the construction and improvement of that portion of Southern Street at the sole cost of Developer as set forth herein; and

WHEREAS, Developer recognizes and agrees that the original Pheasant Ridge Development Agreement and the Fourth Amendment thereto require Developer to construct and improve a portion of Bridge Street adjacent to the Property and Estrella Street, at its sole cost, consistent with the City's specifications and standards as the same may be amended from time to time; and

WHEREAS, the Developer has agreed to pay all the Traffic Impact Fees and Traffic Improvement Escrow Account installment payments as required at the application for each individual building permit for the Development, as more particularly set forth in the Agreement; and

WHEREAS, the parties hereto are desirous of setting forth their understandings and agreements in regard to the funding and use of the Street Improvement Escrow Account.

COVENANTS

NOW THEREFORE, in consideration of the promises and the mutual covenants contained herein, the sufficiency of which are expressly acknowledged, together with other good and sufficient consideration, the parties hereto consent and agree as follows:

1. The Fourth Amendment which added Paragraph #13 to Section F, Special Provisions of the Pheasant Ridge Development Agreement dated January 18, 2000 is hereby incorporated herein as if specifically set forth and the parties hereto agree to the terms and provisions of said Fourth Amendment.

2. Definition of Terms. For the purposes of this Escrow Agreement, the following terms shall have the following meanings:

- a. *“Adjacent Roadways”* shall mean those rights-of-way to be constructed by the City as specified in the Fourth Amendment, including South 40th Avenue (Tower Road), Interim South 40th Avenue and Southern Street abutting and adjacent to that portion of the Pheasant Ridge Subdivision as more particularly set forth in the Fourth Amendment. *“Adjacent Roadways”* does not include that portion of Bridge Street and/or Estrella Street to be constructed at the sole cost of Developer.
- b. *“Disbursement Request”* shall mean an application by Developer to the City for reimbursement of its actual costs incurred in the design, construction and improvement of South 40th Avenue (Tower Road) as a minor arterial street including travel lanes, curb and gutter sidewalk, center median, one-quarter of the cost of signalization, and landscaping, including right-of-way landscaping, street trees, and center median landscaping, from the Bridge Street intersection on the north to the Southern Street intersection on the south, along the eastern boundary of the Subdivision, consistent with the Final Road Construction Plans referenced in the Agreement, in the form as set forth in **Exhibit “A”** attached hereto and incorporated herein by reference
- c. *“Developer”* shall mean Montex Lands, Inc. and its successors, assigns, and affiliates.
- d. *“Escrow Deposits”* means the installment payments deposited by the Developer into the Street Improvement Escrow Account pursuant to the terms of the Agreement and this Escrow Agreement.

- e. *“Street Improvement Escrow Account”* shall mean the Pheasant Ridge Improvement Escrow Account for the construction of the Adjacent Roadways.
 - f. *“Street Improvements”* shall mean those improvements to South 40th Avenue, Interim South 40th Ave, Southern Street, Bridge Street, and Estrella Street whether constructed by Developer pursuant to City standards and specifications and/or those improvements to the Adjacent Roadways to be constructed by the City, secured by the Street Improvement Escrow Account and/or by drawing on the Improvement Guarantees provided by Developer for Bridge Street and Estrella Street as required by Section 1.11 of the Development Agreement.
 - g. *“Traffic Impact Fee”* shall mean that certain development fee payable by the Developer at the time of building permit issuance for the Development in the amount as set forth in the City’s annual Fee Resolution in effect at the time of payment.
3. Deposits into Street Improvement Escrow Account by the Developer.
- a. The Developer shall pay the Traffic Impact Fee to the City at the time of building permit issuance for the Development in the amount as set forth in the City’s annual Fee Resolution in effect at the time of payment.
 - b. In addition to the Traffic Impact Fee, the Developer shall pay to the City in installments an amount to reimburse the City for the cost of construction of South 40th Avenue (Tower Road), Interim South 40th Avenue, and Southern Street. The escrow amounts shall be paid to the City in installments, as the Property is developed by Montex or its successors, assigns, or affiliates. The amount of each installment payment is based on the Developer’s estimated costs of redesigning and constructing the Adjacent Roadways, whether completed by the City or Developer, divided by the planned total number of single-family detached lots, single-family attached lot square footage, and commercial lot square footage, as applicable, proposed to be built within the Property as demonstrated in Exhibit A of the Fourth (4th) Amendment to the Pheasant Ridge Development Agreement.

The installment payment amounts are broken down per residential lot for single-family detached residences, and per square foot of lot area for single-family attached and commercial lots. Should the actual number of single-family detached lots and/or single-family attached lot square footage and/or commercial lot square footage deviate from the estimates described in Fourth Amendment and the attachments thereto, the installment payment amounts shall be increased or decreased and pro-rated accordingly by the City, to reflect the actual number of single-family detached lots, single-family attached lot square footage, and commercial lot square footage constructed. In the event of a sale of any part of the Property and upon payment of the remaining balance of such installment payments for that part of the Property, that part shall be released from any further financial obligations of this Escrow Agreement (“Partial Release”) and a document showing that Partial Release may be recorded

with the County Clerk's Office at the expense of the Developer. In addition, the City shall not be obligated to issue any building permit for any part of the Property, until such payments are timely paid.

4. Construction of the Street Improvement/Construction Representatives.

- a. The Street Improvements constructed by Developer shall be constructed in accordance with City standards and specifications, as well as applicable state and federal regulations.
- b. Each party shall designate and assign a project representative to act on behalf of that entity to coordinate all matters related to the construction and oversight of construction of the roadways, including, but not limited to, the quality of the items to be used in said construction, the schedule and sequencing of construction, compliance with applicable standards and specifications.
- c. The City designates the Director of Streets and Fleet Department as its representative. Developer designates _____, as its representative. Developer representatives may be replaced upon written notification to the City.

5. Payment Procedures, Covenants and Agreements.

- a. The City covenants and agrees that it will accept and use due care in disbursing Escrow Deposits in accordance with this Escrow Agreement.
- b. All funds received by the City for the Street Improvement Escrow Account shall be deposited in a segregated interest bearing account maintained by the City and shall only be used as payment for the improvement of the Adjacent Roadways or the completion of Bridge Street and/or Estrella Street, upon default by the Developer as provided in Section 9.1 of the Agreement. All interest shall accrue to Developer, but shall remain in the Account and be added to the amounts deposited thereto.
- c. From and after the commencement of design and engineering of the Adjacent Roadways by the City or assumption of the construction and improvement of Bridge Street and/or Estrella Street upon default of the Developer, the City may draw on the funds deposited in the Street Improvement Escrow Account for payment of or reimbursement for the costs of the design, construction and improvement of the Adjacent Roadways, Bridge Street and/or Estrella Street. The City shall notify the Developer of the withdrawal of such funds in writing.
- d. If the Developer elects to construct and improve South 40th Avenue (Tower Road) as provided in Section 3(C) of Exhibit F as set forth in the Fourth Amendment to the Agreement, the Developer may request disbursement of funds from the appropriate account as identified in said Section for the payment of costs incurred and paid by the Developer. The Developer shall furnish a Disbursement Request to City's Representative, with a copy to the City's Finance Department, the requisite Disbursement Request in form consistent with **Exhibit "A"**, including a signed affidavit of actual construction costs with detailed cost breakdown, and copies of signed bills/invoices submitted for payment by Developer. A signed affidavit to attest that no claims can be made against the City shall also accompany the Disbursement Request Form.
- e. Upon receipt of a Disbursement Request, the City shall, within fifteen (15) business days, undertake an inspection of the work performed or materials supplied to verify

the information set forth in the Disbursement Request. The City will be deemed to have received the Disbursement Request upon delivery, if hand delivered to the City of Brighton Finance Department, or three (3) days after deposit in the United States mail if sent by certified mail.

- f. Upon the City's inspection of the work performed or materials supplied and approval of the construction to which a Disbursement Request applies, the City shall, within thirty (30) days, make payment from the Escrow Deposits to the party listed as the payee on the Disbursement Request form. If there are insufficient funds in the Street Improvement Escrow Account to pay the full amount requested, a partial payment will be made and further payments will be made only as funds are received. Payments will only be made once each month.
 - g. Developer shall submit Disbursement Requests not more frequently than once each calendar month.
 - h. Developer shall construct the street improvements to Bridge Street in strict accordance with the Final Road Construction Plans referenced in the Agreement and the street improvements to Estrella Street in accordance with standards and specifications of the City applicable thereto.
6. Dispute Resolution. The parties agree to use their best efforts and act in good faith to resolve any disputes related to the implementation, performance, or interpretation of this Agreement.
7. Interest and Excess Funds. Any interest earned on the Escrow Deposits shall remain in the Street Improvement Escrow Account. Any funds remaining in the Escrow Account after payment of the costs of construction and improvements of the street improvements shall be retained by the City for additional improvements to South 40th Avenue (Tower Road), Interim South 40th Avenue, Southern Street, Bridge Street and Estella Street adjacent to or within the Property.
8. Entire Agreement. This Agreement embodies the entire agreement between the parties and there have been and are no covenants, agreements, representations, warranties or restrictions between the parties other than those specifically set forth in this agreement.
9. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be interpreted and construed in accordance with the laws of the State of Colorado.
10. Modifications. This Agreement shall not be amended or changed except by written instrument with the proper official signatures attached hereto.

Dated this _____ day of _____, 2014.

DEVELOPER:

By: _____
Robin D. Lang, President
Montex Lands, Inc.
5815 Gulfon Street
Houston, TX 77081

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by Robin D. Lang, President of Montex Lands, Inc.

By: _____

WITNESS my hand and official seal:

Notary Public

My commission expires: _____

CITY OF BRIGHTON, COLORADO

By: Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

PHEASANT RIDGE STREET IMPROVEMENT DISBURSEMENT REQUEST FORM

7

Disbursement Request No. _____

3. THIS DISBURSEMENT REQUEST IS ACCOMPANIED BY A BILL(S), INVOICE(S) OR STATEMENT(S) OF ACCOUNT FOR SUCH OBLIGATION.

4. THIS DISBURSEMENT REQUEST IS ACCOMPANIED BY RELEASES OF LIENS AND/OR OTHER CLAIMS IDENTIFIED AS FOLLOWS:

APPROVED:

Developer Authorized Representative

Date

This request and required documentation have been reviewed and found to be acceptable. Construction acceptance has been granted for this portion of work.

City of Brighton Authorized Representative

Date

**City Council
Agenda Item
8C**



**Finance Department
Division of Procurement and Contracts
Staff Report**

Reference: *Award of Formal Bid for Traffic Signal Construction at Baseline Road & North Main Street-
Bid #14-032*

To: Mayor Richard N. McLean and Members of City Council
Through: Manuel Esquibel, City Manager

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: _____

Prepared By: Sharon L. Williams, Procurement & Contracts Manager
Through: Kimberly Dall, Assistant Streets/Fleet Director
Joe Smith, Director of Streets/Fleet
Date Prepared: July 28, 2014

PURPOSE

Requesting City Council approval of a formal bid for the Traffic Signal Construction at Baseline Road & North Main Street to the lowest most responsive and responsible bidder, and approving the resolution giving the Mayor authority to sign the contract. Municipal Code Section 3.08.090, ". . . All bids and proposals in excess of \$50,000 shall be awarded through formal written procedures by the city council."

BACKGROUND/HISTORY

This project is for the placement of a Traffic Signal at Baseline Road and North Main Street. This signal is being constructed based on the completion of a warrant study and due to high truck traffic generated by the energy boom. A portion of this signal is being funded through a DOLA Energy Impact Grant.

A formal bid was prepared for the solicitation and was received on July 22, 2014 at 11:00 AM; four (4) firms attended the mandatory pre-bid conference with one (1) firm submitting a bid for this project. The bid received was opened and read into record by the Procurement & Contracts Manager at a public bid opening.

Procurement has contacted the firms that signed in as a General Contractor at the pre-bid conference and then did not submit a bid. Their responses included: signed in as a general but was actually a sub-contractor; could not get responses from electrical sub-contractors in time to submit; Procurement did not receive a response from the third request.

FINANCIAL IMPACT

Funding was approved in the 2014 in the budget. The City, based on a long lead time, has pre ordered the poles to meet the year-end deadline as required by DOLA. The proposal from W. L. Contractors, Inc. is within the budgeted amount.

STAFF RECOMMENDATION

In completing the review and evaluation of this bid the recommendation is to award to the lowest most responsive and responsible bid of W. L. Contractors, Inc., in the amount of Two Hundred Thirty Five Thousand Eight Hundred Forty Five Dollars (\$235,845.00). W. L. Contractors, Inc. is in good standing with the State of Colorado.

OPTIONS FOR COUNCIL CONSIDERATION

- Approval as presented
- Reject
- Require new bids be prepared

Attachments:

- Resolution
- Bid Abstract

RESOLUTION

RESOLUTION NUMBER: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACCEPTING THE BID OF W. L. CONTRACTORS, INC. AND AWARDING THE CONTRACT FOR THE TRAFFIC SIGNAL CONSTRUCTION AT BASELINE ROAD & NORTH MAIN STREET, BID #14-032, IN AN AMOUNT NOT TO EXCEED TWO HUNDRED THIRTY FIVE THOUSAND EIGHT HUNDRED FORTY FIVE DOLLARS (\$235,845.00), AND AUTHORIZING THE MAYOR TO SIGN THE CONTRACT ON BEHALF OF THE CITY AND THE CITY CLERK TO ATTEST THERETO.

WHEREAS, pursuant to Section 17.7 of the City of Brighton Charter, "*The Council shall establish by ordinance procedures requiring competitive bidding for contracts for the procurement of services, equipment, and supplies*"; and

WHEREAS, Chapter 3.08 of the Brighton Municipal Code, sets forth the requirements and procedures for purchasing of supplies or services and contracting for public works or professional services; and

WHEREAS, the City published a notice inviting bids through its formal bid process for completion of the Traffic Signal Construction at Baseline Road & North Main Street; and

WHEREAS, funding was approved in the 2014 budget and through a DOLA Energy Impact Grant for the Traffic Signal Construction at Baseline Road & North Main Street Project; and

WHEREAS, W. L. Contractors, Inc., submitted a bid for the project which has been reviewed by the City; and

WHEREAS, the City believes that W. L. Contractors, Inc. is the lowest and most responsive and responsible bidder for the Traffic Signal Construction at Baseline Road & North Main Street; and

WHEREAS, the City believes that it is in the best interests of the City to accept the bid of W. L. Contractors, Inc. in the amount of Two Hundred Thirty Five Thousand Eight Hundred Forty Five Dollars (\$235,845.00), to award the contract for the Traffic Signal Construction at Baseline Road & North Main Street Project to W. L. Contractors, Inc., in an amount not to exceed Two Hundred Thirty Five Thousand Eight Hundred Forty Five Dollars (\$235,845.00), and to authorize the Mayor to sign the contract on behalf of the City and the City Clerk to Attest thereto.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:

1. That W. L. Contractors, Inc. is the lowest responsive and responsible bidder for the Traffic Signal Construction at Baseline Road & North Main Street; and
2. That the bid of W. L. Contractors, Inc. in the amount of Two Hundred Thirty Five Thousand Eight Hundred Forty Five Dollars (\$235,845.00), is hereby approved; and

3. That funding was approved in the 2014 budget and through a DOLA Energy Impact Grant for the Traffic Signal Construction at Baseline Road & North Main Street Project; and
4. That the Contract for the Traffic Signal Construction at Baseline Road & North Main Street Project is hereby awarded to W. L. Contractors, Inc. in the amount not to exceed Two Hundred Thirty Five Thousand Eight Hundred Forty Five Dollars (\$235,845.00); and
5. That the Mayor is hereby authorized to sign the contract with W. L. Contractors, Inc. on behalf of the City and the City Clerk to Attest thereto.

RESOLVED, this 5th day of August, 2014.

**CITY OF BRIGHTON, COLORADO
CITY COUNCIL**

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

BID ABSTRACT
Traffic Signal Construction at Baseline Road & North Main Street
 Bid #14-032

Firm Name	Bid Bond	Acknowledge Addenda 1 & 2	Total Base Bid Amount	ALTERNATES		
				Intersection Detection System (FLIR)	Intersection Detection System (GridSmart)	Traffic Signal Controller Cabinet & Controller (Cobalt)
W.L. Contractors Inc.	X	X	\$235,845	\$28,920	\$21,000	\$28,330
5920 Lamar Street						
Arvada, CO 80003						

Note: The award will be for the base bid amount only. No alternate bids will be accepted. SLW

Opened and Read into Record: *Sharon L Williams*, Procurement & Contracts Manager
 Recorded by: Pam Roeding, Ass't Procurement & Contracts Manager

**City Council
Agenda Item
8D**



**Finance Department
Division of Procurement and Contracts
Staff Report**

Reference: *Award the Interior Painting at the Recreation Center – Phase 1 to Gonzales Custom Painting, Inc. in the not to exceed amount of Fifty Five Thousand Dollars (\$55,000) - RFP #14-040-R*

To:	Mayor Richard N. McLean and Members of City Council		
Through:	Manuel Esquibel, City Manager		
<input type="checkbox"/> Finance Reviewed:	_____	<input type="checkbox"/> Regular Council Agenda Date:	_____
<input type="checkbox"/> Attorney Reviewed:	_____	<input type="checkbox"/> Resolution / Ordinance #	_____
<input type="checkbox"/> Publication Dates:	_____		
Prepared By:	Pam L. Roeding Assistant Procurement and Contracts Manager		
Through:	Bob Brady, Facilities Capital Project Manager		
	Gary Wardle, Director of Parks & Recreation		
	Jeffery Hulett, Recreation Center Manager		
	Sharon L. Williams, Procurement & Contracts Manager		
Date Prepared: July 28, 2014			

PURPOSE

City Council approval is being requested for a formal proposal for the Interior Painting at the Recreation Center- Phase 1 to the firm having the requisite expertise and experience to perform the required Services, and approving the resolution giving the Mayor authority to sign the contract. Municipal Code Section 3.08.090, “. . . . All bids and proposals in excess of \$50,000 shall be awarded through formal written procedures by the City Council.”

BACKGROUND/HISTORY

The interior areas of the Recreation Center are in need of painting due to the heavy customer use each year. Additionally areas like the pool room and locker rooms are subject to high humidity and chemicals which also affect the longevity of the paint. It has been many years since these areas have been painted and the surfaces are beginning to show their age and are in need of repainting to protect the walls and restore the aesthetics of the facility.

The intent of this proposal is to complete interior painting of the building in 2014 (Phase 1) and 2015 (Phase 2) as budget permits and as the awarded contractor is able to complete. It is the intent of the City to award Phase 2 of the project, to complete the remaining painting project, to the same Service Provider providing the costs are held by the award contractor into 2015 and with an approved 2015 budget.

A Formal proposal was solicited and received on July 10, 2014 at 11:00am for the Interior Painting at the Recreation Center- Phase 1; three (3) firms attended the mandatory pre-proposal conference with one (1) firm submitting a proposal for this project.

The one (1) firm submitting a proposal is: Gonzales Custom Painting, Inc.

The criteria used for the evaluation and final recommendation of the interviewed firms included:

- review of the submitted Proposal;
- responsiveness to the needs of the City, both in time to complete and the scope of services offered;
- previous governmental experience with projects of similar size, scope and nature;
- prior working knowledge and experience with Jefferson County Public Schools, RTD Denver, University of Colorado at Boulder, Ayuda and City and County of Denver

Procurement has contacted the firms that did not submit a proposal. Their responses included: they were at bonding capacity and could not submit a bid at this time; company too small to perform the required work; and exceeding workload at this time (schools out of session and meeting school requirements).

In completing the evaluation of the submitted proposal, including the information received at the interviews, the firm of Gonzales Custom Painting, Inc. was selected by the project team as the firm best meeting the evaluation criteria as set forth above.

FINANCIAL IMPACT

Funding was approved in the 2014 budget in the amount of \$65,000 for the completion of the Interior Painting at the Recreation Center- Phase 1; the proposal from Gonzales Custom Painting, Inc. is within the budgeted amount.

STAFF RECOMMENDATION

In completing the review and evaluation of this proposal the recommendation is to award to the firm having the requisite expertise and experience to perform the required Services of Gonzales Custom Painting, Inc. in the amount of Fifty Five Thousand Dollars (\$55,000) for Interior Painting at the Recreation Center-Phase 1. Gonzales Custom Painting, Inc. is in good standing with the State of Colorado.

OPTIONS FOR COUNCIL CONSIDERATION

- Approval as presented
- Reject
- Require new proposals be prepared

Attachments:

- Resolution
- RFP Fee Proposal

RESOLUTION

RESOLUTION NUMBER: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACCEPTING THE PROPOSAL GONZALES CUSTOM PAINTING, INC. AND AWARDING THE CONTRACT FOR THE INTERIOR PAINTING AT THE RECREATION CENTER- PHASE 1, RFP #14-040-R, IN AN AMOUNT NOT TO EXCEED FIFTY FIVE THOUSAND DOLLARS (\$55,000), AND AUTHORIZING THE MAYOR TO SIGN THE CONTRACT ON BEHALF OF THE CITY.

WHEREAS, pursuant to Section 17.7 of the City of Brighton Charter, "The Council shall establish by ordinance procedures requiring competitive bidding for contracts for the procurement of services, equipment, and supplies. Any such ordinance may provide exclusions from the competitive bidding requirements for contracts below an amount specified in the ordinance, for the types of contracts specified in the ordinance, and for the types of services, equipment or supplies specified in the ordinance"; and

WHEREAS, Chapter 3.08 of the Brighton Municipal Code, sets forth the requirements and procedures for purchasing of supplies or services and contracting for public works or professional services; and

WHEREAS, the City published a notice inviting proposals through its formal process for completion of the Interior Painting at the Recreation Center- Phase 1; and

WHEREAS, funding was approved in the 2014 Recreation Center Capital Improvement for the Interior Painting at the Recreation Center- Phase 1 in the amount of \$65,000; and

WHEREAS, Gonzales Custom Painting, Inc., submitted a proposal for the project which has been reviewed by the City; and

WHEREAS, the City believes that Gonzales Custom Painting, Inc. has held itself out to the City of Brighton as having the requisite expertise and experience to perform the required Services for the Project; and

WHEREAS, the City believes that it is in the best interests of the City to accept the proposal of Gonzales Custom Painting, Inc. in the amount of Fifty Five Thousand Dollars (\$55,000), to award the contract for the Interior Painting at the Recreation Center- Phase 1 to Gonzales Custom Painting, Inc., in an amount not to exceed Fifty Five Thousand Dollars (\$55,000), and to authorize the Mayor to sign the contract on behalf of the City.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:

1. That Gonzales Custom Painting, Inc. has the requisite expertise and experience to perform the required Services for the Project; and
2. That the Proposal of Gonzales Custom Painting, Inc. in the amount of Fifty Five Thousand Dollars (\$55,000), is hereby approved; and

3. That funding was approved in the 2014 Recreation Center Capital Improvement budget for the Interior Painting at the Recreation Center- Phase 1; and
4. That the Contract for the Interior Painting at the Recreation Center- Phase 1 is hereby awarded to Gonzales Custom Painting, Inc. for Interior Painting at the Recreation Center- Phase 1 in the amount not to exceed Fifty Five Thousand Dollars (\$55,000); and
5. That the Mayor is hereby authorized to sign the contract with Gonzales Custom Painting, Inc. on behalf of the City.

RESOLVED, this 5th day of August, 2014.

**CITY OF BRIGHTON, COLORADO
CITY COUNCIL**

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

RFP Fee Proposal
Interior Painting at the Recreation Center - Phase 1
RFP #14-040-R

Name of Firm: Gonzales Custom Painting, Inc.

	WORK AREA & DESCRIPTION – Phase 1	ITEM COST
1	Pool area including the poolside locker room entrance	\$25,000
2	Weight room corridor and weight room	\$5,000
3	Running track and hand railing	\$5,000
4	Lobby	\$5,000
5	Locker rooms and ceilings	\$10,000
6	Community room corridor and conference rooms	\$5,000
TOTAL BID AMOUNT		\$55,000

**City Council
Agenda Item
8E**

Department of Streets and Fleet

Reference: CHANGE ORDER NO. 1 TO KECI, Inc. Contract for Bromley Lane and US85 Safety Improvements Project# 92810 (South Main Street Realignment) In an Amount Not To Exceed \$150,000

To: Mayor Richard N. McLean and Members of City Council
Through: Manuel Esquibel, City Manager

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: _____

Prepared By: Kimberly J. Dall, Assistant Director of Streets and Fleet
Reviewed By: Joe K. Smith, Director of Streets and Fleet

Date Prepared: July 8, 2014

PURPOSE

Consider a resolution authorizing a change order to the Bromley Lane and US85 Safety Improvements construction contract with KECI, Inc. for the improvements to Bromley Lane, US 85, and South Main Street realignment in an amount not to exceed \$150,000.

BACKGROUND

The City was granted Federal Funding in the form of earmarks for safety improvements at the intersection of Bromley Lane and US 85, including the realignment of South Main Street and the intersection with Bromley Lane. The total project cost was estimated to be \$5,142,168. The construction contract of \$3,313,959 and construction management contract of \$122,115 contribute to that total with the balance of the estimate to fund the design, property acquisition, and force account work.

CDOT identifies force account items within the bid contract as a method to pay for project elements that have a high potential for modification, such as minor contract revisions, fuel cost adjustments, asphalt price adjustments, etc. For this specific project, a force account cost of \$155,453 was estimated by CDOT for Environmental Health & Safety Management. CDOT policy is to have force account awarded in the contract bid. Handling and disposal of hazardous materials was not anticipated based on the prior subsurface investigations and therefore not budgeted for in the City's original contract award.

Roadwork construction plans were prepared and environmental clearances were received for this project, both by CDOT, in accordance with State and federal procedures. During construction of the South Main Street realignment hazardous materials were encountered, causing strict mitigation measures to be implemented with a significant cost. As a result of the hazardous materials encountered, a change order is needed.

FINANCIAL IMPACT

This change order increases the KECI contract by \$150,000 for a total contract amount of \$3,463,959.

OPTIONS FOR COUNCIL CONSIDERATION

1. Approve the resolution as presented.
2. Postpone and request further information.
3. Approve a modified resolution.

BRIGHTON CITY COUNCIL RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO APPROVING CHANGE ORDER #1 TO THE CITY OF BRIGHTON CONTRACT WITH KECL, INC. FOR CONSTRUCTION SERVICES FOR THE US85 AND BROMLEY LANE PROJECT (MAIN STREET REALIGNMENT) IN THE AMOUNT NOT TO EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CHANGE ORDER NO. 1 ON BEHALF OF THE CITY; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE TO UNDERTAKE SUCH TASKS AND EXECUTE SUCH DOCUMENTS AS MAY BE REQUIRED TO IMPLEMENT THE CHANGE ORDER AND COMPLETE THE PROJECT; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

Resolution Number: _____

WHEREAS, the Bromley Lane and US 85 (Main Street) Project was approved by the City Council and budgeted in 2013; and

WHEREAS, delays to Construction Services were necessary to complete the safety improvements during construction of the South Main Street realignment when hazardous materials were encountered, causing strict mitigation measures to be implemented with a significant unforeseen cost; and

WHEREAS, the City Streets and Fleet Department has determined that the necessary mitigation at the construction site resulted in increased time for access and remedial work, and that the additional costs associated with such work are necessary to complete the Project in a timely manner; and

WHEREAS, the unforeseen costs created the need for an increase to the overall cost of the current contract with KECL, Inc. in an amount not to exceed \$150,000; and

WHEREAS, sufficient funding for the Bromley Lane and US 85 (Main Street Realignment) improvements is available in the 2014 Budget to accommodate the funding for Change Order #1.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:

1. That Change Order #1 to the Contract by and between the City of Brighton and KECL, Inc. for the additional associated services for the Bromley and US 85 (Main Street realignment) improvements is hereby approved in the amount not to exceed \$150,000.

2. That the City Manager is authorized to sign said Change Order #1 on behalf of the City.
3. That the City Manager is authorized to undertake such tasks and execute such documents as may be necessary to implement Change Order #1 and complete the Project.

RESOLVED, this 5th day of August, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, Esq.
City Attorney

**City Council
Agenda Item
8F**

Department of Streets and Fleet	
Reference: Bowman-Vision Land LLC Contract Change Order No. 1 for Bromley Lane and US85 Safety Improvements Project #92810 (South Main Street Realignment)	
To: Through:	Mayor Richard N. McLean and Members of City Council Manuel Esquibel, City Manager
<input type="checkbox"/> Attorney Reviewed: _____ <input type="checkbox"/> Finance Reviewed: _____ <input type="checkbox"/> Publication Dates: _____	<input type="checkbox"/> Regular Council Agenda Date: _____ <input type="checkbox"/> Resolution / Ordinance # _____
Prepared By: Reviewed By:	Kimberly J. Dall, Assistant Director of Streets and Fleet Joe K. Smith, Director of Streets and Fleet
Date Prepared:	July 8, 2014

PURPOSE

Consider a resolution authorizing a Change Order No. 1 to the Bromley Lane and US85 Safety Improvements construction management contract with Bowman-Vision Land (formerly Vision Land LLC) for the management of improvements to Bromley Lane, US 85, and South Main Street realignment in an amount not to exceed \$110,000.

BACKGROUND

The City was granted Federal Funding in the form of earmarks for safety improvements at the intersection of Bromley Lane and US 85, including the realignment of South Main Street and its intersection with Bromley Lane. The total project cost was estimated to be \$5,142,168. The construction contract of \$3,313,959 and construction management contract of \$122,115 contribute to that total with the balance of the estimate to fund the design, property acquisition, and force account work.

Roadwork construction plans for this project were prepared by CDOT in accordance with state and federal procedures. State and federal grants are part of the financial support for this project; as such many stringent requirements must be followed to guarantee proper use of the funds. The City awarded a contract to Vision Land Consulting (now Bowman Vision Land) to manage the construction and paperwork, and ensure applicable procedures are followed.

The management contract planned for approximately 4½ months of construction duration, which was based on an anticipated 150 calendar day construction schedule; the actual project duration will be closer to 10 months.

The construction management contract was awarded prior to the construction contract to allow the construction management consultant to assist in the bid process. During the bid process for the construction contract, the management consultant provided services to support construction contractor evaluation, contract execution, and project start up; and the schedule was revised to

150 working days. The bid process lasted three months and added two months to the construction duration. Construction commenced in November and continued through the winter and spring with 16 non-working weather days extending the project duration.

During construction, numerous unforeseen challenges have been encountered, including improperly located and unknown utility lines, hazardous materials mitigation, and major elevation discrepancies between existing and proposed conditions. The asbestos discovered in the buildings to be demolished added three weeks to the duration, asbestos in the trash pit added more than a month. City staff has performed design modifications as well as construction work when possible to reduce the delays and additional costs encountered; however, delays have occurred and the revisions in conditions from the bid plan set have made managing the project more involved than initially projected.

The management consultant has worked to maintain a strong working relationship with the contractor and project stakeholders, and to identify cost-saving value-engineering opportunities. The efforts on each of those fronts will prove to lower the overall actual construction costs while ensuring an environment of fairness and cooperation between the City, KECI and their subcontractors.

The management consultant is necessary to maintain the project schedule as well as the funding eligibility for this project; a change order to the Bowman Vision Land contract is therefore needed.

FINANCIAL IMPACT

The total increase to the Bowman Vision Land contract is \$110,000.

OPTIONS FOR COUNCIL CONSIDERATION

1. Approve the resolution as presented.
2. Postpone and request further information.
3. Approve a modified resolution.

BRIGHTON CITY COUNCIL RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO APPROVING CHANGE ORDER #1 TO THE CITY OF BRIGHTON CONTRACT WITH VISION LAND CONSULTANTS (N/K/A BOWMAN VISION LAND, LLC) IN AN AMOUNT NOT TO EXCEED ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000) FOR ADDITIONAL PROFESSIONAL SERVICES FOR THE US85 AND BROMLEY LANE PROJECT (MAIN STREET REALIGNMENT) IN THE AMOUNT OF \$110,000; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CHANGE ORDER #1 ON BEHALF OF THE CITY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO UNDERTAKE SUCH TASKS AND EXECUTE SUCH DOCUMENTS AS MAY BE REQUIRED TO IMPLEMENT THE CHANGE ORDER AND FINALIZE THE PROJECT; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

Resolution Number: _____

WHEREAS, the Bromley Lane and US 85 (Main Street) Project was approved by the City Council and budgeted in 2013; and

WHEREAS, the City entered into a contract with Vision Land Consultants (n/k/a Bowman Vision Land, Inc.) to provide professional construction management services to the City for the Project; and

WHEREAS, during construction of the South Main Street realignment Project hazardous materials were encountered, causing strict mitigation measures to be implemented with a significant unforeseen cost; and

WHEREAS, the additional mitigation measures required additional professional services from Vision Land Consultants; and

WHEREAS, the City Streets and Fleet Department has determined that the additional associated mitigation costs are necessary to complete the Project in a timely manner; and

WHEREAS, the unforeseen costs created the need for an increase to the overall cost of the current contract with Bowman Vision Land by \$110,000; and

WHEREAS, sufficient funding for the Bromley Lane and US 85 (Main Street Realignment) improvements is available in the 2014 Budget to accommodate the funding for Change Order #1 in the amount of \$110,000.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:**

1. That Change Order #1 to the Contract by and between the City of Brighton and Vision Land Consultants (now Bowman Vision Land) for the additional associated construction management services for the Bromley and US 85 (Main Street realignment) improvements is hereby approved in the amount not to exceed \$110,000.
2. That the City Manager is authorized to sign said Change Order #1 on behalf of the City.
3. That the City Manager is authorized to undertake such tasks and execute such documents as may be necessary to implement Change Order #1 and complete the Project.

RESOLVED, this 5th day of August 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, Esq.
City Attorney

**City Council
Agenda Item
8G**

Department of Parks and Recreation

Reference: A Resolution Approving the Purchase and Sale Agreement, the State Funding Agreement, and the County Conservation Easement, for the purchase of the Eagle Preserve Property, generally located near 144th Avenue and Lewiston Court in Brighton.

To: Mayor Richard N. McLean and Members of City Council
Through: Manuel Esquibel, City Manager

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: _____

Prepared By: Gary Wardle, Director of Parks and Recreation

Date Prepared: June 24, 2014

PURPOSE

Approval of a Resolution approving: (1) the Purchase and Sale Agreement with RH VI, LLC and Forterra Investments, Ltd. (Mick Richardson); (2) approving the Funding Agreement with the State of Colorado; and (3) approving the Conservation Easement for the benefit of Adams County; and (4) approving certain other items to complete the transaction – all for the purchase of the Eagle Preserve Property generally located near 144th Avenue and Lewiston Court in Brighton.

BACKGROUND

In 2012 the City Council approved negotiations for the City's acquisition of approximately 42 acres of Open Space land known as the Eagle Preserve Property. The property is generally located in the vicinity of 144th Avenue and Lewiston Court in Brighton. The property being acquired has three parts: the North Parcel, South Parcel, and the "Wagon Road" Parcel. This property will be part of a 178 acre open space assemblage known as the Prairie Lakes Open Space (see attached map). Attached is a Resolution approving three (3) agreements to accomplish the City's acquisition of the property.

The first agreement is the Purchase and Sale Agreement with the property owners, represented by Mick Richardson. The purchase price is \$930,000.00 which is slightly less than appraised value. During investigation of the property, some asbestos material was found in buildings on the property. The owner has agreed to remove and properly abate the asbestos material prior to closing, at the owner's expense. The owner will convey fee title to the North and South Parcels, and will grant and convey a Permanent Public Easement over the Wagon Road Parcel. The Easement will provide access and north-south connectivity between the North and South Parcels, and will establish east-west trail connectivity between Brighton Lakes and Prairie Center. The owner will also transfer the Mineral Rights to the City, including an existing oil and gas lease, reserving any royalties that may arise in the future. This will help prohibit any surface use of the property for mineral extraction.

The second agreement is a Funding Agreement with the State of Colorado. This agreement with the State is required to disburse funds from the Natural Resources Damages Fund. The State Funding Agreement identifies the funding sources for the acquisition, requires fairly extensive due diligence including a Mineral Rights Assessment, Baseline Report, ALTA survey, and title commitment. All necessary due diligence has been completed.

The third agreement is a Conservation Easement for the benefit of Adams County. The Conservation Easement will limit the use of the property for open space purposes, and will prohibit any development, including oil and gas surface development. The Conservation Easement will allow a three (3) acre building envelope, to provide for the construction of public parking, picnic shelter, restroom facilities, and trail-head improvements. The property is currently being farmed. Agricultural uses are allowed to continue under the Conservation Easement, at the City's discretion, provided that the farming uses remain consistent with the terms of the Conservation Easement.

As part of the above-referenced agreements, the City will receive two grants to assist in the purchase of the property. The first grant is through the Natural Resources Damage Fund (\$500,000.00). These dollars were made available through a settlement involving Shell Oil Company and the Army Corp of Engineers, for environmental damages caused at the Rocky Mountain Arsenal. The second grant is an Adams County Open Space Grant in the amount of 40% of the purchase price, up to \$400,000. The City will fund \$58,000 from the Recreation Capital Open Space Fund. The City will also recover certain costs incurred for due diligence, from the Adams County Open Space Grant.

FINANCIAL IMPACT

The Purchase price is \$930,000.00. The Natural Resources Damage Fund will provide \$500,000.00 and Adams County Open Space will provide \$372,000.00. The City will fund \$58,000.00. In addition, the City will be reimbursed for a portion of its due diligence costs for the ALTA survey, Phase I Environmental Assessment, the Baseline Report, and the Mineral Assessment, up to \$28,000 from the Adams County Open Space Grant.

OPTIONS FOR COUNCIL CONSIDERATION

- 1) **Approve the Resolution to approve the various agreements to acquire the property; or**
- 2) **Deny the Resolution**

STAFF RECOMMENDATION

Staff Recommends approval of the Resolution. The Eagle Preserve property is an important acquisition to complete the Prairie Lakes Wildlife Preserve Open Space assemblage. This acquisition will protect important wildlife habitat, and provide valuable open space amenities in Brighton.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE FOLLOWING, IN FURTHERANCE OF COMPLETING THE “EAGLE PRESERVE / PRAIRIE LAKES WILDLIFE PRESERVE” OPEN SPACE ACQUISITION: (1) THAT CERTAIN PURCHASE AND SALE AGREEMENT (“PSA”) BETWEEN THE CITY AND RH VI, LLC AND FORTERRA INVESTMENTS, LTD. (“OWNER” AND “SELLER”), FOR THE PURCHASE AND SALE OF CERTAIN ADAMS COUNTY AGRICULTURAL LANDS, TOGETHER WITH CERTAIN EASEMENTS AND MINERAL RIGHTS (THE “PSA”); (2) APPROVING THAT CERTAIN CONSERVATION EASEMENT AGREEMENT BETWEEN THE CITY AND ADAMS COUNTY TO HELP FUND THE ACQUISITION AND PRESERVE THE PROPERTY (THE “CONSERVATION EASEMENT”); (3) APPROVING THAT CERTAIN FUNDING AGREEMENT BETWEEN THE CITY AND THE STATE OF COLORADO FOR FUNDING PUROSES (THE “FUNDING AGREEMENT”); AND (4) AUTHORIZING AND DIRECTING THE CITY MANAGER OR HIS DESIGNEES TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE REASONABLY NECESSARY TO CARRY OUT AND SUCCESSFULLY CLOSE THE TRANSACTION FOR THE CITY.

RESOLUTION NO. _____

WHEREAS, at the City Council’s direction, the Director of Parks & Recreation and City Attorney’s Office have negotiated the PSA with the Owner and Seller, for the purchase and sale of approximately forty-two (42) acres of open agricultural lands in Adams County, generally located near 144th Avenue and Lewiston Court in Brighton, together with certain appurtenant mineral rights and open space trail easements (collectively, the “Property”); and

WHEREAS, pursuant to the PSA, attached as **Exhibit A** and incorporated by reference, the City would acquire title to the Property, together with certain mineral rights and open space trail easements, in exchange for the total Purchase Price of Nine Hundred Thirty Thousand Dollars (\$930,000.00); and

WHEREAS, the City would fund the acquisition as follows: Fifty Eight Thousand Dollars (\$58,000.00) in City funds, Three Hundred Seventy Two Thousand Dollars (\$372,000.00) in open space grant funds from Adams County, and Five Hundred Thousand Dollars (\$500,000.00) in natural resources damages funds from the State of Colorado; and

WHEREAS, the City Council has determined and directed, and Adams County and the State of Colorado have agreed (as a condition of their funding a portion of the transaction), that the specific purpose and goal of the acquisition shall be to ensure the preservation of this Property for open space purposes in perpetuity (including agricultural and wildlife habitat purposes), in order to protect the agricultural heritage and history of the City and County, to preserve valuable open space and wildlife habitat, to keep prime agricultural lands in productive farming, and to otherwise preserve such lands, free from the pressures of commercial, residential or other similar development; and

WHEREAS, the City Council therefore finds and determines that the acquisition and preservation of the Property is in the best interests of the City, and would greatly benefit the health, safety and welfare of the citizens of Brighton, Adams County, and the State of Colorado by preserving open lands, by fostering and promoting the preservation of agriculture and wildlife habitat, and by removing the Property from other development pressures, in perpetuity; and

WHEREAS, the City Council further finds and determines that the terms and provisions of the attached PSA, Conservation Easement, and Funding Agreement are fair and reasonable to the City, and that it is in the best interests of the City to enter into said agreement for the purposes of acquiring and preserving the Property, according to the terms and provisions of said agreements.

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, that the attached PSA, Conservation Easement, and Funding Agreement are hereby approved, and the City Manager is authorized to execute the agreements for and on behalf of the City; and further, that the City Manager or his designees are hereby authorized to undertake such actions and execute such documents as are reasonably necessary to implement and otherwise perform the agreements, and to take such additional reasonable actions as are needed to successfully close the transaction for the City; and

RESOLVED THIS 5th DAY OF AUGUST 2014.

CITY OF BRIGHTON, COLORADO

Richard McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker
City Attorney

PURCHASE AND SALE AGREEMENT

between

RH VI, LLC, a Colorado limited liability company,

and

FORTERRA INVESTMENTS LTD., a Colorado corporation,

as Seller,

and

THE CITY OF BRIGHTON, a Colorado home rule municipality,

as Purchaser

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made and entered into as of the Effective Date (as defined in Section 20(o) below), by and between the **CITY OF BRIGHTON**, a Colorado home rule municipality, as the purchaser hereunder (“**Purchaser**”), and **RH VI, LLC**, a Colorado limited liability company, and **FORTERRA INVESTMENTS LTD.**, a Colorado corporation, as the sellers hereunder (collectively, “**Seller**”).

W I T N E S S E T H:

WHEREAS, Seller owns the following described property (collectively, the “**Property**”):

(a) that certain Adams County real property owned by RH VI, LLC, being a portion of the west half of the northeast quarter of Section 20 (the “North Parcel”), and a portion of the west half of the southeast quarter of Section 20 (the “South Parcel”), both situated in Township 1 South, Range 66 West of the 6th P.M., Adams County, Colorado, and more particularly described in **Exhibit A**, comprising approximately 41.77 acres, more or less; and

(b) that certain other adjacent and abutting Adams County real property owned by FORTERRA INVESTMENTS LTD., also being a portion of Section 20, Township 1 South, Range 66 West of the 6th P.M., Adams County, Colorado, also more particularly described in **Exhibit A** (the “Wagon Road Parcel”); and

(c) as to (a) and (b) above, all and singular the rights, interests and appurtenances owned by Seller pertaining to the subject Property described in **Exhibit A**, including, without limitation, all of Seller’s right, title and interest, if any, in and to any and all improvements, ditches, laterals, headgate(s), carriage rights, storage rights, reservoirs, oil, gas, minerals, mineral rights and leases, all interests of Seller in and to adjacent roads, streets, alleys, easements and rights-of-way to, from, adjacent to or crossing the Property, and all rights of access, ingress and egress, and any appurtenant strips or gores; and

WHEREAS, Purchaser is desirous of purchasing the Property from Seller and Seller is agreeable to such sale and conveyance, subject to the conditions and agreements hereinafter set forth.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the foregoing premises and the respective undertakings of the parties hereinafter set forth, the receipt and sufficiency of which consideration are hereby acknowledged, it is hereby agreed as follows:

1. Purchase and Sale of Property. In consideration of the Purchase Price (defined in Section 2) and subject to the terms and conditions hereinafter set forth, Seller shall sell, transfer, assign and convey to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, the following interests in the Property. Specifically, Seller shall convey: (a) marketable fee title to the North and South Parcels, together with (b) a permanent, non-exclusive easement and right-of-way across all or a portion of the Wagon Road Parcel for public purposes of ingress, egress and public access to and from

the Property, including the right to place, locate, use and maintain, in perpetuity, public open space and pedestrian trails upon and across said easement (the "Wagon Road Easement").

2. Purchase Price. Subject to the terms hereof, Seller shall convey good and indefeasible fee simple title to the Property to Purchaser at Closing, free and clear of any and all liens, encumbrances, conditions, easements, assessments and restrictions, except for the Permitted Exceptions (as defined in Section 4 below), in consideration of the purchase price to be paid by Purchaser to Seller (the "Purchase Price") equal to the total sum of Nine Hundred Thirty Thousand Dollars (\$930,000.00). The Purchase Price is payable as follows:

(a) Earnest Money. No later than five (5) business days after the Effective Date, Purchaser shall deliver the sum of Twenty Thousand Dollars (\$20,000.00), in the form of a check or wire-transfer, to Chicago Title of Colorado, Inc., 8055 E. Tufts Avenue, Ste. 300, Denver, CO 80237 (the "**Escrow Agent**" or "**Title Company**"), as the earnest money deposit hereunder ("**Earnest Money**"). At any time prior to the expiration of the Review Period, Purchaser shall have the right to terminate this Agreement by delivering written notice to Seller and the Title Company, whereupon the Title Company shall immediately return the Earnest Money to Purchaser, this Agreement shall be deemed terminated and of no further force or effect, and the parties shall have no further obligations hereunder except those that may by their express terms survive such termination. If Purchaser fails to deliver such notice prior to the expiration of the Review Period, then this Agreement shall remain in full force and effect and the parties shall continue to perform this Agreement in good faith. All Earnest Money delivered by Purchaser to the Title Company shall immediately be deposited in an interest-bearing, FDIC-insured account as directed by Purchaser (provided that Purchaser furnishes to the Title Company all information and signs all applicable forms required by the Title Company to accomplish the same). As used herein, the term "Earnest Money" shall include any and all interest accruing thereon, from time to time, which interest, under all circumstances, shall inure to the sole benefit of Purchaser.

(b) Cash at Closing. Purchaser shall deliver the Adjusted Balance of the Purchase Price (as defined in Section 6(b)(i) below), in cash, by wire-transfer, cashier's check or other good funds acceptable to the Title Company for immediate disbursement at Closing.

3. Title, Survey, Environmental Assessments and Other Deliveries.

(a) Title Commitment. Seller shall at Seller's expense, within ten (10) business days after the Effective Date, cause Chicago Title of Colorado to issue and deliver to Purchaser a current commitment for 2006 ALTA Owner's Extended Coverage Title Insurance Policy, committing to insure title in the Purchaser in the amount of the Purchase Price and consistent with the terms and provisions of Section 7 of this Agreement (the "**Commitment**"), along with legible and complete copies of the vesting deed(s) and all other documents of public record referenced in the Commitment (collectively, the "**Title Documents**").

(b) Survey. Seller shall, within fifteen (15) days after the Effective Date, deliver to Purchaser and the Title Company copies of any and all surveys, maps and/or plats of the Property in Seller's possession and control. Purchaser shall have the right during the Review

Period, to obtain (or to have updated) an ALTA/ACSM survey of the Property (the “**Survey**”), prepared by a Colorado licensed surveyor, certified to Purchaser and the Title Company. The Survey shall include, all in a manner acceptable to Purchaser and the Title Company, (i) a certification that Items 1, 2, 3, 4, 5, 8, 10, 11, 16, 17 and 18 from Table A of the 2005 “Minimum Standard Detail Requirement for ALTA/ACSM Land Title Surveys” have been surveyed, reviewed and included in the Survey, (ii) a certification as to the exact acreage of the Property (the “**Acreage of the Property**”), and (iii) a certification as to the flood plain designation(s) applicable to the Property, and shall be in a form sufficient to cause the Title Company to delete from the Owner’s Policy all standard pre-printed exceptions for unrecorded easements, survey matters and rights of parties in possession, subject to any specific items which the Survey discloses. Upon approval and verification by Purchaser, the legal description for the Property, as certified by the surveyor and confirmed by the Title Company, shall be deemed to be the “Property.” Purchaser shall pay all of surveyor’s costs, charges, fees and expenses for the Survey, and in the event that Purchaser has not made such payment by the time of Closing, the costs thereof may be charged as a cost against the Purchaser and disbursed to surveyor by the Title Company.

(c) Environmental Assessments. Seller shall, within fifteen (15) days after the Effective Date, deliver to Purchaser and the Title Company copies of any and all environmental surveys, reports and/or studies of the Property in Seller’s possession and control. Purchaser shall have the right during the Review Period to obtain a Phase I Environmental Assessment (the “**Phase I**”), which may also address whether the Property contains wetlands, and any and all additional environmental assessments suggested by the Phase I or otherwise required by Purchaser (including, without limitation, a Phase II Environmental Assessment of the Property) (collectively, the “**Environmental Assessments**”). Upon Seller’s request Purchaser shall provide a copy of any Environmental Assessment to Seller, within a reasonable time after the Purchaser receives any Environmental Assessment. Purchaser shall also provide Seller with the scope and estimated cost of any proposed Phase II Environmental Assessment and allow Seller the opportunity to comment on the scope. Except as otherwise provided herein, Purchaser shall pay all costs, charges, fees and expenses for such Environmental Assessments, and in the event that Purchaser has not made such payment by the time of Closing, the costs thereof may be charged as a cost against the Purchaser and disbursed to the appropriate persons or companies by the Title Company.

(d) Other Deliveries. Seller shall, within ten (10) days after the Effective Date, at its sole expense, deliver to Purchaser true, accurate and complete copies of all materials and documents (the “**Due Diligence Items**”) in any way related to the Property or to the development, use, operation, condition, or marketability of the Property which are in the possession or control of Seller, Seller’s agents, or Seller’s independent contractors, including, but not limited to the following:

- (i) topographic maps or surveys and all other survey materials presently existing concerning the Property;
- (ii) any geotechnical studies, environmental assessments, soils assessments or reports, or engineering studies;

- (iii) any and all leases, mineral leases, and surface rights and non-disturbance agreements, contracts, pipeline agreements, ditch agreements, or other agreements that might affect title to the Property or otherwise be binding on Purchaser or the Property following Closing;
- (iv) copies of any agreements or information relating to any agreements with adjoining owners, homeowners associations or groups, or the State of Colorado, or any other similar entity; and
- (v) such other documentation and information relating to the Property as is reasonably requested or required by Purchaser to perform its review of the Property pursuant to Section 5 below.

At the time of making its deliveries to Purchaser pursuant to this Section 3, Seller shall also disclose to Purchaser all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Purchaser shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy) which is not revealed by the Survey. Written notice of any unsatisfactory condition(s) disclosed by Seller or by Purchaser's inspection shall be signed by or on behalf of Purchaser and given to Seller during the Review Period (as defined in Section 5 below) and shall thereafter be treated as a part of the Title Objection Notice and shall be dealt with in the same manner as a Title Objection Notice. If Seller does not receive Purchaser's notice on or before the last day of the Review Period, Purchaser accepts title subject to such rights, if any, of any third parties disclosed to Purchaser by Seller or actually discovered by Purchaser or Purchaser's Representatives during any inspection.

4. Title Review Period.

(a) If, in Purchaser's sole discretion, the Title Documents or the Survey disclose exceptions or conditions which are not acceptable to Purchaser, or the certification contained on the Survey is not acceptable to Purchaser or the Title Company, then Purchaser shall notify Seller in writing (jointly, the "**Title Objection Notice**") of its objections to such exceptions, conditions or certifications (collectively the "**Title Defects**") on or before the last day of the Review Period. Purchaser also shall designate in the Title Objection Notice any endorsements to the Title Policy (in addition to the endorsements set forth in Section 7) desired by Purchaser. Seller agrees to cause to be discharged at or prior to Closing all Title Defects pertaining to encumbrances shown on the Commitment of a definite or ascertainable amount caused or created by the Seller ("**Removable Liens**"). If during the Review Period, Purchaser shall fail to give written notice to Seller of its objection(s) to any Title Defects (other than Removable Liens), then Purchaser shall be deemed to have waived its right to object to such Title Defects. Those items or matters to which Purchaser has not objected (or waived, as hereinafter provided) shall be referred to individually as a "**Permitted Exception**," and collectively as the "**Permitted Exceptions**." If Purchaser delivers a Title Objection Notice during the Review Period, then Seller, during the seven (7) day period immediately following Purchaser's delivery

of the Title Objection Notice (the “**Cure Period**”) may (a) cure or correct such objections to Purchaser’s reasonable satisfaction, but without any obligation to do so; and shall (b) deliver written notice (the “**Seller Cure Response**”) to Purchaser as to which Title Defects it will and/or will not cure prior to or at Closing. If Seller shall fail during the Cure Period to cure or correct any of Purchaser’s objections or to deliver a Seller Cure Response committing to cure all Title Defects designated in the Title Objection Notice at or prior to Closing, then Purchaser may, after the expiration of the Cure Period, elect to terminate this Agreement by delivering written notice thereof to Seller, whereupon the Earnest Money and all accrued interest shall be returned to Purchaser and the parties hereto shall have no further rights, obligations or liabilities hereunder other than pursuant to any indemnity provision contained herein. In the event that Purchaser does not elect to terminate this Agreement in accordance with this Section 4, each Title Defect to which Purchaser has objected and which Seller has not cured or committed in writing to cure at or prior to Closing shall be deemed waived by Purchaser and shall constitute an additional Permitted Exception.

(b) If, between the end of the Review Period and the Closing date, any update to the Commitment discloses a new title defect which is not a previously disclosed Permitted Exception (a “**Subsequent Exception**”), Purchaser shall have ten (10) days following receipt of the updated Commitment disclosing the Subsequent Exception (the “**Subsequent Exception Period**”) within which to review and either approve or disapprove the Subsequent Exception. If Purchaser disapproves of any Subsequent Exception, Purchaser may give Seller written notice of the same (the “**Subsequent Exception Objection**”) within the Subsequent Exception Period, and within seven (7) days after such Subsequent Exception Objection, Seller shall advise Purchaser in writing (the “**Subsequent Exception Response**”) whether or not Seller is willing or able to remedy any such objections. Seller’s failure to provide a timely Subsequent Exception Response may be treated as a determination by Seller that it will not remedy any such Subsequent Exception(s). If Seller is unable or unwilling to remedy any such objections, then within five (5) days after Purchaser’s receipt of the Subsequent Exception Response, Purchaser may, at its option, either (i) elect to terminate this Agreement by delivering written notice thereof to Seller, whereupon the Earnest Money and all accrued interest shall be returned to Purchaser and the parties hereto shall have no further rights, obligations or liabilities hereunder other than pursuant to any indemnity provisions contained herein, or (ii) waive any such uncured Subsequent Exception(s), in which event any such uncured Subsequent Exception shall be deemed a Permitted Exception. Purchaser’s failure to provide a Subsequent Exception Objection shall constitute an election under clause (ii). Notwithstanding the foregoing provisions of this Section 4(b), Subsequent Exceptions shall not include any matters caused by Purchaser during the Review Period.

5. Review Period; Contingencies. Purchaser and Purchaser’s Representatives will have a period of time commencing on the Effective Date until the Closing Date (the “**Review Period**”), in which to conduct or complete any and all physical, engineering, environmental, feasibility, financial, title and other studies, investigations, reviews, assessments, appraisals and inspections of, and to perform such other due diligence with respect to the Property as Purchaser deems necessary, proper or advisable, in an effort to determine whether or not to proceed with the Closing of the purchase and sale transaction contemplated hereby. Seller hereby agrees that Purchaser and Purchaser’s Representatives shall be allowed reasonable

access to the Property to conduct such tests and perform such due diligence, and hereby grants to Purchaser and Purchaser's Representatives a license therefor (which shall be irrevocable until the end of the Review Period). Seller agrees that Purchaser and Purchaser's Representatives shall be allowed reasonable access, during Seller's regular business hours, to Seller's records pertaining to the Property and may photocopy said records. To the extent permitted by Colorado law, Purchaser shall save, defend, indemnify, and hold Seller harmless from any and all losses, costs, expenses, damages, liabilities, mechanics' or materialmen's liens or claims of liens, actions or causes of action and attorneys' fees and costs of suit, to the extent same arise out of the acts or omissions of Purchaser, its contractors, consultants, inspectors or others who enter onto the Property at the request or on behalf of Purchaser ("**Purchaser's Representatives**") for the purpose of conducting physical, engineering, environmental, feasibility, financial, title, and/or other studies, investigations, reviews, assessments and inspections of, and to perform such other due diligence with respect to the Property. The foregoing indemnification provision shall remain operative and shall survive any termination of this Agreement for one (1) year; provided, however, as a condition precedent to Seller's enforcement of the indemnification rights set forth in this Section 5, Seller must have delivered a written claim to Purchaser no later than the date which is one (1) year following the date on which notice of the termination of this Agreement was provided to the other party.

At any time prior to the expiration of the Review Period, Purchaser may, at its option and in its sole and absolute discretion, terminate this Agreement and receive a full refund of its Earnest Money and all accrued interest by delivering written notice of its election to terminate this Agreement ("**Termination Notice**") to Seller on or before 5 p.m. (Mountain Time) on the last day of the Review Period in accordance with Section 18 below, with a copy of such Termination Notice to be sent to the Title Company within a reasonable time thereafter. Immediately upon the delivery of such Termination Notice, the Earnest Money shall be returned to Purchaser, this Agreement shall be deemed terminated and of no further force or effect and the parties shall be released from all obligations hereunder except those that expressly survive any such termination. If Purchaser fails to deliver such Termination Notice prior to the expiration of the Review Period, then this Agreement shall remain in full force and effect and the parties shall continue to perform under this Agreement in accordance herewith.

In the event Purchaser or Seller terminates this Agreement in accordance herewith, Purchaser, at its sole cost and expense, shall reasonably restore the Property to a condition that is substantially similar to the condition existing immediately prior to the commencement of any physical inspection of the Property, and return all documentation, maps, surveys and studies received from Seller. Purchaser's termination shall not be deemed effective, and Purchaser shall not be entitled to receive a return of the Earnest Money, until it has so reasonably restored the Property. Without limiting the generality of the foregoing, Purchaser may terminate this Agreement during the Review Period for purposes of convenience; or for any unsatisfactory title or physical condition deemed unacceptable by Purchaser; or in case the Property does not appraise for at least the Purchase Price; or in the event of the failure of any financing contingency for Purchaser's benefit. Upon the Termination Notice and Purchaser's receipt of the Earnest Money from the Title Company, this Agreement shall be deemed terminated and of no further force or effect, and the parties shall have no further obligations hereunder except those that specifically survive such termination. Purchaser and Seller agree and acknowledge

that if Purchaser terminates this Agreement for one or more causes, or for convenience only, it shall not be in breach of this Agreement and Seller shall not be permitted to exercise any right or remedy provided in Section 13 below.

Purchaser and Seller further acknowledge and agree that Purchaser's obligation to close this transaction is expressly contingent upon Purchaser securing, during the Review Period (or as the same may be extended) open space grant funds from Adams County in the approximate amount of Four Hundred Thousand Dollars (\$400,000.00), funds from the State of Colorado in the approximate amount of Five Hundred Thousand Dollars (\$500,000.00); and upon the City budgeting and successfully appropriating additional funds in an amount sufficient to pay the balance of the Purchase Price and Purchaser's transaction costs; and upon the Property appraising for at least the Purchase Price.

6. Closing. Subject to the other terms hereof, the closing of the purchase and sale of the Property ("**Closing**") shall take place at the offices of the Purchaser, at a time to be mutually determined by the Parties, within thirty (30) calendar days after the Effective Date, or within fifteen (15) calendar days after any extension of the Review Period.

Purchaser may elect to close prior to the Closing Date by delivering written notice to Seller and the Title Company. Such written notice shall specify the accelerated date and time of Closing and shall be binding upon, and enforceable against, each of the parties hereto. The parties hereto shall then work diligently so that the Closing occurs in accordance with Purchaser's request. The parties hereto may, by written agreement, elect to postpone the Closing to a later mutually agreed-upon date and time.

(a) Deliveries by Seller at Closing. On or before the Closing Date, Seller shall deliver fully executed originals of the following documents to the Title Company:

(i) Deed. A Special Warranty Deed conveying the North and South Parcels to Purchaser, in a form reasonably acceptable to Purchaser (the "Deed");

(ii) Easement. A form of permanent non-exclusive easement conveying a perpetual, non-exclusive public easement and right-of-way through, in and across the Wagon Road Parcel, for public purposes including the right to place, use, operate and maintain public open space pedestrian trails across the easement.

(iii) Title Policy. The Owner's Title Policy (as defined in Section 7 below), insuring fee title to the North and South Parcels, and insuring all rights and benefits appurtenant to the easement across the Wagon Road Parcel, in the Purchaser;

(iv) Property Transfer Declaration. A Real Property Transfer Declaration in form required by law and in substance satisfactory to Purchaser and the Title Company;

(v) Authority. Such evidence or documents as may be reasonably required by Purchaser or the Title Company evidencing the status and capacity of Seller and the

authority of the person or persons who are executing the various documents on behalf of the Seller in connection with the sale of the Property;

(vi) Non-Foreign Status Certificate. If required by the Title Company, Seller shall execute and deliver to Purchaser and the Title Company an affidavit that evidences that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code; and

(vii) Miscellaneous. Seller shall execute and deliver to the Title Company such other documents, instruments, agreements or statements as may be reasonably required by the Title Company or as may be necessary in order to effect the consummation of the transactions contemplated hereby.

(b) Deliveries by Purchaser at Closing. On or before the Closing Date, Purchaser shall deliver the following items to the Title Company:

(i) Purchase Price. In accordance with the Title Company's wire instructions, a wire transfer of the balance of the Purchase Price (as reduced by the Earnest Money and all accrued interest, and as reduced or increased by other adjustments, credits and prorations provided for in this Agreement) (the “**Adjusted Balance of the Purchase Price**”);

(ii) Authority. Such evidence or documents as may reasonably be required by Seller or the Title Company evidencing the status and capacity of Purchaser and the authority of the person or persons who are executing the various documents on behalf of the Purchaser in connection with the sale of the Property; and

(iii) Miscellaneous. Purchaser shall execute and deliver to the Title Company such other documents, instruments, agreements or statements or as may be reasonably required by the Title Company or as may be necessary in order to effect the consummation of the transactions contemplated hereby.

7. Title Policy and Closing Costs. At the Closing, Seller shall at its expense cause the Title Company to issue or irrevocably commit to issue to Purchaser, pursuant to the Commitment, an ALTA (2006 Form) Owner's Extended Policy of Title Insurance (the “**Owner's Title Policy**”) in the full amount of the Purchase Price, insuring marketable and insurable title in Purchaser as the owner of the North and South Parcels in fee simple absolute, and as the grantee under the Wagon Road Easement, and: (a) containing no exceptions to title other than the Permitted Exceptions, (b) modifying the exception for taxes to refer to taxes for the year in which the Closing occurs, and subsequent years, (c) containing no exception for any matters which may come of record between the effective date of the Commitment and the date and time of recording the Deed, and (d) endorsed with (i) an endorsement for deletion of the standard pre-printed exceptions for unrecorded easements, survey matters and rights of parties in possession, (ii) an endorsement for deletion of the standard exceptions, if any, for mechanic's liens and/or leases or tenancies (iii) an access endorsement (iv) a tax parcel endorsement, and (v) mineral endorsements 100.29 and/or 100.31.

The recording fees for the Deed shall be paid by Purchaser, and all other closing costs and escrow fees charged by the Title Company shall be split equally between Seller and Purchaser. Each party shall be responsible for its own attorneys' fees. Seller shall pay the premium for the Owner's Title Policy and any additional endorsement Seller has agreed to obtain pursuant to Sections 4 and 7, and Purchaser shall pay the premiums for any other endorsements or title policies requested by Purchaser.

8. Prorations, Credits and Adjustments. All ad valorem real estate and personal property taxes, charges and/or assessments affecting the Property shall be prorated and apportioned to the Closing Date. If any such taxes, charges or assessments have not been finally assessed as of the Closing Date, then the same shall be prorated based on the most recent mill levy and assessment at time of Closing Date and reconciled within 30 days after a final tax bill is available.

9. Conservation Easement; 1031 Exchange. [Reserved]

10. Representations and Warranties of Seller. For the purpose of inducing Purchaser to enter into this Agreement and to consummate the sale and purchase of the Property in accordance herewith, Seller hereby represents and warrants to Purchaser that the following are true and correct and will also be true and correct as of the Closing Date:

(a) No Conflict. The execution and delivery of this Agreement and the documents required to consummate the transaction hereunder will not: (a) conflict with or be in contravention of any provision of any law, order, rule or regulation applicable to Seller or the Property; (b) result in the breach of any of the terms or provisions of, or constitute default under, any agreement or other instrument to which Seller is a party or by which it or any portion of the Property may be bound or affected; (c) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of Seller; or (d) result in any lien, charge or encumbrance of any nature on the Property other than as permitted by this Agreement.

(b) Contracts. Seller has not made, and is not aware of, any commitment or representation to any governmental authority, or any adjoining or surrounding property owner, which would in any way be binding on Purchaser or would interfere with Purchaser's ability to use or improve the Property, and Seller will not make any such commitment or representation without Purchaser's written consent.

(c) Condemnation. To the best of Seller's knowledge, no condemnation, eminent domain or similar proceedings have been instituted or threatened against the Property.

(d) Litigation. To the best of Seller's knowledge, there are no legal actions pending or threatened against the Property or against Seller which would affect the Property or inhibit Seller's ability to consummate the transaction contemplated by this Agreement. To the best of Seller's knowledge there are no actions, suits, or proceedings, pending or threatened, before any judicial body or any governmental authority, against or affecting the Property.

(e) Compliance with Laws. Seller has received no notice of and has no knowledge of the assertion of any violation of any law, rule, regulation, code, ordinance, order, decree, judgment, injunction or covenant that would affect the Property or Seller's ability to consummate this transaction in any manner.

(f) Liens. The Property shall be transferred to Purchaser on the Closing Date free and clear of any and all liens and encumbrances, except for Permitted Exceptions. Any liens affecting the Property as of the date of Seller's execution of this Agreement will be fully and completely satisfied and released on or before the Closing Date.

(g) Environmental. Except as may be disclosed in Environmental Assessments, the Property has at all times during Seller's ownership, been used and operated in compliance with all applicable Environmental Laws (as hereinafter defined); no Hazardous Substances (as hereinafter defined) are present in, on, under, or above the Property; the condition of the Property is not affected by the current or past presence of Hazardous Substances; no conditions exist that would subject Seller or Purchaser to any damages (including, without limitation, actual, consequential, exemplary or punitive damages), penalties, injunctive relief or cleanup costs under any Environmental Laws, or that require or are likely to require cleanup, remedial action or other response by Seller or Purchaser pursuant to Environmental Laws.

With respect to the Property, Seller has received no notice of any litigation or administrative proceeding, pending or threatened against Seller or the Property which asserts or alleges that the Property is in violation of any Environmental Laws, which violation has not been corrected, or that Seller is required to clean up, remove or take remedial or other responsive action due to the use, storage, treatment, disposal, discharge, leaking or release of any Hazardous Substances (as hereinafter defined). To Seller's actual knowledge, none of Seller or any of its predecessors, or any part of the Property is subject to any judgment, decree, order or citation related to or arising out of Environmental Laws, and Seller has not been named or listed as a potentially responsible party by any governmental entity in a matter arising under or relating to any Environmental Laws, relating to or affecting the Property. To Seller's best knowledge, there are no underground storage tanks located on the Property. Except as otherwise disclosed to Purchaser in writing, no environmental remediation work has been performed on the Property. Any remediation work has been approved by the applicable governmental agencies and those governmental agencies have issued a "No Further Action" or "No Action Determination" letter, demonstrating the investigation and remediation at the site is complete.

As used herein, the term "**Environmental Laws**" shall mean any and all laws (whether common or statutory), compacts, treaties, conventions, rules, regulations, codes, plans, requirements, criteria, standards, orders, decrees, judgments, injunctions, notices or demand letters issued, promulgated or entered thereunder by any federal, tribal, state or local governmental entity relating to public or employee health and safety, pollution or protection of the environment, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendment and Reauthorization Act and otherwise ("**CERCLA**"), the Resource Conservation and Recovery Act ("**RCRA**"), the Federal Safe Drinking Water Act, the Federal Water Pollution Control Act,

the Emergency Planning and Community Right-to-Know Act, the Clean Air Act, the Oil Pollution Act, and any and all other federal, state, tribal and local laws, rules, regulations and orders relating to reclamation of land, wetlands and waterways or relating to use, storage, emissions, discharges, clean-up, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or Hazardous Substances (as hereinafter defined) on or into the workplace or the environment (including without limitation, ambient air, oceans, waterways, wetlands, surface water, ground water (tributary and non-tributary), land surface or subsurface strata, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of pollutants, contaminants, chemicals, or industrial, toxic, hazardous or similar substances, as all of the foregoing may be amended, supplemented and reauthorized from time to time.

As used herein, the term “**Hazardous Substances**” shall mean any and all (i) “**hazardous substances**,” as defined by CERCLA; (ii) “**solid wastes**” and “**hazardous wastes**,” as defined by RCRA; (iii) any pollutant, contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Environmental Law; (iv) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2011 *et seq.*, as amended, or any naturally occurring radioactive materials; and (v) asbestos in any form or condition.

As used herein, the term “**release**” shall have the meaning specified in CERCLA, and the term “**disposal**” or “**disposed**” shall have the meaning specified in RCRA.

The statements, representations and warranties made in this Section 10(g) are subject and expressly limited to Seller’s actual knowledge, during the period of Seller’s ownership of the Property.

If, on or before the Closing, one or more of the representations and warranties made above or elsewhere in this Agreement shall be or become untrue or incorrect in any material respect, then Purchaser may terminate this Agreement and receive a full refund of all Earnest Money and all accrued interest, and thereafter, Purchaser and Seller shall have no further rights, obligations or duties one to the other hereunder, other than pursuant to any indemnity provision herein. Except as to items disclosed in the Environmental Assessments and accepted by Purchaser, the representations and warranties of Seller set forth in this Section 10 and elsewhere in this Agreement shall remain operative and shall survive Closing and the execution and delivery of the Deed and other documents delivered at Closing by Seller for two (2) years; provided, however, that (i) such representations and warranties shall apply only as to facts and circumstances which existed as of the Closing and; (ii) as a condition precedent to Purchaser's enforcement of any rights or remedies for the breach of any of Seller's representations and warranties set forth in this Section 10 and elsewhere in this Agreement following Closing, Purchaser must have delivered a written claim to Seller no later than the date which is two (2) years following the Closing Date.

11. Purchaser’s Representations and Warranties. Purchaser represents and warrants to Seller as follows:

(a) Purchaser has full right, power and authority to execute this Agreement and consummate the transactions herein described, without the consent or joinder of any other person or party; and

(b) Purchaser is not a party to any suit, arbitration or other proceedings or any governmental investigations, and none, to Purchaser's knowledge, are threatened against Purchaser, which would adversely and materially affect Purchaser's right or ability to enter into this Agreement or to consummate the transactions contemplated hereby.

12. Seller's Dealings Regarding the Property. From and after the Effective Date, until the end of the Review Period or earlier termination of this Agreement:

(a) Seller will not grant or convey any easement or any other legal or beneficial interest in or to the Property, without the prior written consent of Purchaser;

(b) Seller will cause all current insurance coverage of the Property, including without limitation any public liability insurance which Seller maintains with respect to the Property, to be continued in full force and effect; and

(c) Seller will abide by the exclusivity provisions of Paragraph 17 below.

13. Seller's Remedies. In the event Purchaser fails to close the transaction contemplated hereby or otherwise breaches its obligations hereunder in any material respect, other than due to Seller's default hereunder or the termination hereof by Purchaser in accordance with the applicable provisions hereof, Seller shall, as its sole and exclusive remedy, be entitled to receive the immediate release of all of the Earnest Money and all accrued interest pursuant to this Section 13 as liquidated damages; Seller and Purchaser agreeing that actual damages due to Purchaser's default hereunder would be difficult and inconvenient to ascertain and that such amount is not a penalty and is fair and reasonable in light of all relevant circumstances.

14. Purchaser's Remedies. If Seller fails to close the transaction contemplated hereby or otherwise breaches its obligations hereunder, other than due to Purchaser's default hereunder or the termination hereof by Seller in accordance with the applicable provisions hereof, Purchaser may, as its sole and exclusive remedies, either (a) terminate this Agreement and receive a full and immediate refund of the Earnest Money and all accrued interest, or (b) seek specific performance hereof and damages (but not to cure title or any defect applicable to the Property other than title defects which Seller is obligated to cure pursuant to Section 4 above).

15. Condemnation. In the event that any "material portion of the Property" shall be taken in condemnation or under the right of eminent domain, or by conveyance in lieu of condemnation, after the date hereof and before the Closing Date, Purchaser may, at its option, either: (a) terminate this Agreement, and receive a full and immediate refund of the Earnest Money and all accrued interest, in which event the Agreement shall be null and void, and the parties hereto shall have no further rights, obligations or liabilities, one to the other, except for the survival of any indemnity provision set forth herein; or (b) apply the proceeds received by Seller from such condemnation or right of eminent domain proceeding, or by conveyance in lieu of

condemnation, against the Purchase Price, receiving a *pro tanto* reduction in the Purchase Price, and proceed to close the transaction described herein as to the remaining portion of the Property. As used herein, the term “material portion of the Property” shall mean any portion of the Property having a fair market value greater than five percent (5%) of the Purchase Price (whichever is less) or any other taking which would result in the remainder of the Property not conforming with any and all applicable state and local laws and regulations (or applicable variances thereto), or any taking affecting in an adverse manner ingress to or egress from the Property. In the event that less than a “material portion of the Property” shall be taken in condemnation or under the right of eminent domain, or by conveyance in lieu thereof, after the date hereof and before the Closing Date, Purchaser shall close the transaction contemplated hereby and receive a credit equal to the net proceeds received by Seller from such condemnation or right of eminent domain proceeding or conveyance in lieu hereof, or if such proceeds have not yet been received by Seller, Seller shall assign all of its rights, title and interest in and to the proceeds to be received by Seller from such condemnation or right of eminent domain proceeding or conveyance in lieu thereof.

16. Risk of Loss. Except for Purchaser’s curative obligations under Section 5, if any, all risk of loss to the Property shall remain upon Seller prior to the Closing. If, from and after the Effective Date hereof, but prior to the Closing, all or any portion of the Property shall be damaged or destroyed by fire, flood, or other casualty, Seller shall promptly notify Purchaser of same. If such damage is “material,” then Purchaser may either proceed to Closing or terminate this Agreement by written notice to Seller, whereupon all Earnest Money and all accrued interest shall be returned to Purchaser and the parties shall have no further rights, obligations, duties or liabilities one to the other hereunder, except as to any indemnity provisions set forth herein. If Purchaser elects to close, despite said “material” damage or destruction, there shall be no reduction in the Purchase Price (except as provided in this Section 16), and Seller shall assign to Purchaser all of Seller’s right, title and interest in and to all insurance proceeds resulting or to result from said damage or destruction, and Purchaser shall receive a credit against the Purchase Price for any deductible under such policy. Unless otherwise provided herein, the term “material” shall mean damage or destruction, the cost of repairing which exceeds five percent (5%) of the Purchase Price. In the event of less than material damage or destruction to the Property prior to the Closing, Seller shall, at its option, either (a) repair, prior to Closing, the same to the condition in which it existed prior to the occurrence of the casualty, at Seller’s expense, or (b) assign Seller’s rights to receive any and all insurance proceeds resulting therefrom to Purchaser, and Purchaser shall receive a credit against the Purchase Price for any deductible under such policy. In the event the amount of insurance proceeds to be made available is not able to be determined prior to the Closing Date, or the repairs are not able to be completed prior to said date, either party, by written notice to the other, may postpone the date of the Closing to such date as shall be designated in such notice, but not more than thirty (30) days after the Closing Date specified in Section 6 above.

17. Exclusivity. From the Effective Date until the end of the Review Period or earlier termination of this Agreement, Seller shall negotiate and communicate in good faith and shall deal fairly and exclusively with Purchaser for the purchase and sale of the Property. During this period of exclusivity, however, Seller may keep the Property listed for sale so long as this Agreement is clearly disclosed, and Seller may accept “back up” offers to purchase the

Property; provided that any such back up offer(s) shall in all respects be subject and subordinate to the Purchaser's rights under this Agreement, shall not modify or diminish Seller's obligations to Purchaser under this Agreement, and shall not displace or supplant this Agreement, including Seller's obligations of good faith and fair dealing to Purchaser.

18. Notices. Any notice required or permitted to be delivered under the terms and conditions of the Agreement shall be in writing and shall be deemed to be delivered (a) when personally delivered to the parties and their respective representatives, (b) one (1) business day following deposit in the United States Post Office, first class mail, postage prepaid, or (c) upon receipt of confirmation of facsimile transmission on or before 5:00 p.m. on a business day at the recipient's location, otherwise on the next business day after receipt is confirmed. Such notices shall be addressed to the parties and their representative as follows:

City: Director of Parks
City of Brighton
500 South 4th Ave.
Brighton, CO 80601
Telephone: 303-655-2135

With a copy to:

Margaret R. Brubaker, City Attorney
Mehaffy Brubaker & Ernst LLC
21 N. 1st Ave., Suite 290
Brighton, CO 80601
Telephone: 303-659-0731
Telecopy: 303-659-0752

Seller: Michael A. Richardson, Manager / Member RH VI, LLC,
and President of Forterra Investments Ltd.
200 West Hampden Ave., Suite 201
Englewood, Colorado 80110

19. Covenants.

(a) Environmental Matters. Seller shall, at its sole expense:

(i) Complete, in a reasonable and timely manner and to the reasonable satisfaction of Purchaser, such remediation work as may be identified in the Environmental Assessments or as a result of Purchaser's due diligence that Seller agrees in its reasonable discretion to perform, and in the event that Seller does not agree to perform the remediation, Seller may elect to terminate this Agreement by giving written notice to Purchaser within thirty (30) days after receiving the Environmental Assessments. Upon such termination the Earnest Money and all accrued interest shall be returned to Purchaser, and Seller shall reimburse Purchaser for the costs of the consultant to perform the Environmental Assessments, and the parties shall have no

further rights, obligations or liabilities one to the other hereunder other than pursuant to the indemnity provision contained herein. In the event Seller decides not to terminate the Agreement within the thirty (30) day period referenced above, and agrees to perform such remediation and such remediation is not able to be completed prior to the Closing Date, Seller may by written notice to Purchaser postpone the date of the Closing to such date as shall be designated in such notice; provided, however, that if such date is more than thirty (30) days after the Closing Date specified in Section 6 above, Purchaser may elect to terminate this Agreement by delivering written notice thereof to Seller, whereupon the Earnest Money and all accrued interest shall be returned to Purchaser and the parties hereto shall have no further rights, obligations or liabilities one to the other hereunder other than pursuant to any indemnity provisions contained herein.

20. Miscellaneous.

(a) Construction of Number and Gender. Words of any gender used herein shall be deemed to include the masculine, feminine and neuter, and words used in the singular shall include the plural and vice versa, all as the context hereof may reasonably require.

(b) Forms. In case of a dispute as to the form of any document required hereunder or otherwise contemplated hereby, the parties agree to act reasonably and to utilize forms that are customary or standard for real estate transactions in Adams County, Colorado.

(c) Attorneys' Fees. If either party is required to enforce its remedies for the default of the other hereunder, including, without limitation, the recovery of all or any portion of the Earnest Money, the defaulting party shall pay any and all reasonable attorneys' fees and related costs and expenses incurred by the non-defaulting party. Further, should either party hereto institute any action or proceeding, either in court or through arbitration (if applicable), to enforce any provision hereof or for any remedy provided herein for any alleged breach of any provision hereof, the prevailing party in such action or proceeding shall be entitled to receive from the losing party all reasonable attorneys' fees and all court and/or arbitration costs in connection therewith. For purposes of this Section, "prevailing party" will include, but not be limited to, a party who withdraws or moves to dismiss a claim in consideration for payment due, performance owed, or other consideration in substantial satisfaction of the claim withdrawn or dismissed.

(d) Integration. This Agreement contains the complete agreement between the parties with respect to the subject matter hereof and cannot be varied except by the written agreement of the parties. The parties agree that there are no other or oral agreements, understandings, representations or warranties which are not expressly set forth herein.

(e) Business Day. If any date herein set forth for the performance or any obligations by Seller or Purchaser or for the delivery of any item, instrument or notice as herein provided should be on a Saturday, Sunday, or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions, courts and/or post offices are generally closed

in the State of Colorado. Except as otherwise provided herein, the deadline for the performance on a particular day shall be 5:00 p.m., local time, in Brighton, Colorado.

(f) Counterparts. This Agreement may be executed in one or more counterparts, and all so executed shall constitute one (1) and the same agreement, binding upon the parties hereto, and notwithstanding that all of the parties are not signatories to the same counterparts, and counterparts executed via facsimile shall have the same force and effect as originals.

(g) Time of the Essence. Time is of the essence of this Agreement and every provision hereof.

(h) Choice of Laws. This agreement shall be governed by the laws of the State of Colorado and forum and jurisdiction for any dispute hereunder shall be in the District Court, County of Adams, Colorado.

(i) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(j) Negotiation by Counsel. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement, and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(k) Authority of Signatory. Each of the signatories hereto individually represents and warrants that he has full right and authority to execute this Agreement on behalf of the party named herein, and that this Agreement is a valid and binding obligation of such party, subject to its terms.

(l) Seller's and Purchaser's Respective Representatives. The individuals respectively executing this Agreement on behalf of Seller and Purchaser are doing so in their respective representative capacities only, solely as a representative of Seller or Purchaser, as applicable, and any liability resulting hereunder based upon the actions of such individual shall merely be that of Seller or Purchaser, as applicable, and not such individual.

(m) Binding Effect. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns, wherever the context so requires or permits.

(n) Headings. The article headings contained herein are for purposes of identification only and shall not be considered in construing this Agreement.

(o) Effective Date. All references herein to the “**Effective Date**” or the “**date hereof**” shall be deemed to be the date when the latest to execute of Seller and Purchaser has fully executed the Agreement.

(p) Earnest Money Dispute. Upon proof that Purchaser has given Seller notice of termination of this Agreement in accordance with its terms, Escrow Agent shall release the Earnest Money and all accrued interest to Purchaser. At Closing, Escrow Agent shall release the Earnest Money and all accrued interest to be applied against the Purchase Price. In any other circumstance, Escrow Agent shall release the Earnest Money as directed by written mutual instructions, signed by both Purchaser and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Agreement), Escrow Agent shall not be required to take any action. Escrow Agent, at its option and sole discretion, may (a) await any proceeding, (b) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (c) deliver written notice to Purchaser and Seller that unless Escrow Agent receives a copy of a summons and complaint or claim (between Purchaser and Seller) containing the case number of the applicable lawsuit (“**Lawsuit**”) within one hundred twenty (120) calendar days of Escrow Agent’s notice to the parties, Escrow Agent shall be authorized to return the Earnest Money to Purchaser. In the event Escrow Agent does receive a copy of the Lawsuit, and has not interpleaded the monies at the time of any Order therein, Escrow Agent shall disburse the Earnest Money pursuant to the Order of the Court.

(q) Special Taxing Districts. **SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**

[Signatures on following page]

EXECUTED by Purchaser this ____ day of _____, 2014.

PURCHASER:

CITY OF BRIGHTON,
a Colorado Home Rule Municipality

Manuel Esquibel,
City Manager

Attest:

Natalie Hoel,
City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq.
City Attorney

EXECUTED by Seller this ____ day of _____, 2014

SELLER:

RH VI, LLC,
a Colorado limited liability company

By: _____
Name: Michael A. Richardson
Title: Manager / Member

FORTERRA INVESTMENTS, LTD.,
a Colorado corporation

By: _____
Name: Michael A. Richardson
Title: President

ACCEPTANCE BY ESCROW AGENT

Chicago Title of Colorado, Inc., referred to in this Agreement as the “Title Company” and the “Escrow Agent,” hereby acknowledges receipt of the Earnest Money in the amount of Twenty Thousand Dollars (\$20,000.00), together with fully executed counterparts of this Agreement. The Escrow Agent certifies that it has received and understands the Agreement and hereby accepts the obligations of the Escrow Agent and the Title Company as set forth herein, including, without limitation, its agreement to hold the Earnest Money and dispose of same, in strict accordance with the terms and provisions of this Agreement.

ESCROW AGENT/TITLE COMPANY:

CHICAGO TITLE OF COLORADO, INC.

By: _____
Name:
Title:
Date:

EXHIBIT A
LEGAL DESCRIPTIONS

SITUATED IN THE COUNTY OF ADAMS, STATE OF COLORADO, AND DESCRIBED AS FOLLOWS:

Parcel One: (Fee – “North” and South” Parcels)

A parcel of land being a portion of the West half of the Northeast Quarter and the West half of the Southeast Quarter of Section 20, Township 1 South, Range 66 West of the 6th Principal Meridian, Adams County, Colorado. Basis of Bearings: The West line of the Northeast Quarter of said Section 20, being assumed to bear South 00 degrees 15 minutes 10 seconds West.
Commencing at the North Quarter corner of said Section 20;
Thence, along said West line, South 00 degrees 15 minutes 10 seconds West, a distance of 30.00 feet to the Point of Beginning;
Thence, continuing along said West line, South 00 degrees 15 minutes 10 seconds West, a distance of 2617.73 feet to the center of said Section 20;
Thence, along the West line of said Southeast Quarter, South 00 degrees 39 minutes 00 seconds East, a distance of 30.00 feet;
Thence North 89 degrees 25 minutes 50 seconds East, a distance of 675.30 feet;
Thence South 00 degrees 39 minutes 00 seconds East, a distance of 794.50 feet;
Thence North 84 degrees 31 minutes 20 seconds East, a distance of 485.53 feet;
Thence North 11 degrees 04 minutes 37 seconds West, a distance of 537.52 feet;
Thence North 00 degrees 11 minutes 13 seconds West, a distance of 250.00 feet to the North line of said West half of the Southeast Quarter;
Thence, along said North line, South 89 degrees 40 minutes 13 seconds West, a distance of 211.65 feet;
Thence North 06 degrees 13 minutes 49 seconds West, a distance of 832.31 feet;
Thence South 87 degrees 25 minutes 43 seconds West, a distance of 50.55 feet;
Thence South 89 degrees 40 minutes 16 seconds West, a distance of 243.12 feet;
Thence North 00 degrees 11 minutes 13 seconds West, a distance of 1791.67 feet;
Thence South 89 degrees 40 minutes 16 seconds West, a distance of 450.88 feet to the Point of Beginning,
EXCEPT ANY PORTION THEREOF described in Warranty Deed recorded December 28, 1998 in Book 5593 at Page 256, County of Adams, State of Colorado.

Parcel Two: (Easement – the “Wagon Road Parcel”) – a perpetual easement for public purposes, through and across all or a portion of the following lands:

Beginning at the West 1/4 of Section 20, Township 1 South, Range 66 West of the 6th P.M.;
Thence East 70 rods to the True Point of Beginning;
Thence South 25 feet;
Thence East 2,555 feet;
Thence North 25 feet;
Thence West 2,555 feet to the Point of Beginning;
and:
Beginning at the East 1/4 corner of Section 20, Township 1 South, range 66 West of the 6th P.M.,
Thence South 25 feet;
Thence West 1320 feet;
Thence North 25 feet;
Thence East 1320 feet to Point of Beginning,
and:
The North 25 feet of the following described land: COMMENCING at a point 863 feet South of North line of West ½ of Southeast ¼ of Section 20, Township 1 South, Range 66 West of 6th P.M. and 140 feet West of East line of said West ½ of Southeast ¼, thence E 140 feet to said East Line, thence North along said East line 863 feet to the Northeast corner of said West ½, thence West along said North line 256 feet, thence South parallel with said East line 250 feet, thence by direct course 621 feet, more or less, to Place of Beginning.
All in Section 20, Township 1 South, Range 66 West of the 6th P.M., County of Adams, State of Colorado.

CTGG1 PAAA 2015000075 **STATE OF COLORADO**
acting by and through the
Department of Natural Resources

FUNDING AGREEMENT

with
The City of Brighton, a Colorado municipal corporation

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1. PARTIES

This Funding Agreement (hereinafter called “FA”) is entered into by and between the State of Colorado acting by and through the Department of Natural Resources (including all agents and contractors thereof shall hereinafter be called “DNR”), and the City of Brighton, a Colorado home rule municipal corporation (hereinafter “City”), who may collectively be called the “Parties” and individually a “Party”.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This FA is not effective or enforceable until it is approved and signed by each of the Parties and by the Colorado State Controller or his designee (hereinafter called the “Effective Date”), but shall be effective and enforceable thereafter in accordance with its provisions.

3. RECITALS

A. Authority, Source, and Approval

Authority to enter into this FA, and funding therefore, exists as a result of a consent decree approved by the United States District Court for the District Court of Colorado in Civil Action No. 83-C-2386, State of Colorado, Plaintiff, United States of America Shell Oil Company (“Shell”), et al., defendants, (hereinafter the “Consent Decree”) related to natural resource damage claims involving the Rocky Mountain Arsenal. The Consent Decree created trustees (hereinafter the “Trustees”) to administer funds paid by Shell to the State pursuant to the Consent Decree, which, in §6, provided for a \$10 million dollar donation from Shell into a fund created by C.R.S. §24-33-108 for the monies donated to DNR by Shell, and the funds have been paid into a DNR account called the Colorado Natural Resources Foundation Fund (hereinafter the “Fund”). Required approvals, clearance and coordination have been

accomplished from and with appropriate agencies of the State and via resolution of the Trustees to make expenditures from the Fund.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this FA.

C. Purpose

Per §6 of the Consent Decree, monies from the Fund are to be used solely for the “Greenway Project” (defined in §3(h) of the Consent Decree). The Trustees passed resolutions dated July 31, 2012 and October 30, 2012 (hereinafter the “Resolutions”) authorizing an expenditure of \$500,000 from the Fund (hereinafter this \$500,000 will be referred to as the “DNR Fund”) as a portion of the \$930,000 purchase price (hereinafter the “Purchase Price”) for a Greenway Project to be purchased by City per the minutes to Trustees meeting of July 31, 2012, the legal description of which is attached hereto as **EXHIBIT A** (the “Property”).

Adams County, acting through the Board of County Commissioners (hereinafter the “County”) has entered into a grant agreement (hereinafter “County GA” attached hereto as **EXHIBIT B**) with the City to contribute additional funds for the purchase of the Property not to exceed \$400,000 or 40% of the cost of the Property acquisition with the City to contribute additional funds for the purchase of the Property.

The City, acting through its City Council, has included in the City’s budget a contribution of up to an additional \$100,000 towards the Purchase Price of the Property.

The City has entered or will enter into a purchase and sale contract (hereinafter the (Purchase and Sale Contract) with RH VI, LLC, a Colorado limited liability company, and Forterra Investments, Ltd., a Colorado corporation, (hereinafter the “Seller”) for the purpose of acquiring the Property. DNR shall coordinate the approval, clearance and coordination of the DNR Fund to be used for the purchase of the Property. In such role, DNR may oversee the due diligence and closing process for the purchase of the Property and shall pay the City in accordance with the Consent Decree for the purchase of the Property in an amount not to exceed the DNR Fund.

In keeping with the intent and funding of the Greenway Project, the City shall, immediately upon its acquisition of the Property, grant a conservation easement encumbering the Property to Adams County (hereinafter the “Easement”) to encumber the Property in perpetuity. DNR may oversee the due diligence and closing process for the grant of the Easement.

4. TERM AND TERMINATION

The Parties respective performances under this FA shall commence on the Effective Date. This FA shall terminate: (A) at 5:00 p.m. on October 1, 2014, or (B) after acquisition of the Property by the City and acquisition of the Easement by Adams County, whichever occurs first, unless sooner terminated or further extended as specified elsewhere herein. Either Party may terminate this FA by giving the other Party written notice setting forth the date of termination. Upon termination, the liabilities of the Parties for future performance hereunder shall cease, but the Parties shall perform their respective obligations up to the date of termination. Upon the date of termination the liabilities of the Parties for future performance hereunder shall cease. Notwithstanding the foregoing, this FA may not be terminated if either: (a) the City’s Earnest Money has become non-refundable under the Purchase and Sale Contract; or (b) termination of this FA would cause a breach by the City under the Purchase and Sale Contract, provided however that this FA may be

terminated if one or more of the provisions in **§5.B**, including **EXHIBIT C**, have not been fully satisfied, or if the City is in default under this FA

5. STATEMENT OF WORK

A. Fund Disbursement

DNR shall disburse the DNR Fund at the Closing (as defined in **§5.C**) of the purchase and sale of the Property. DNR shall only disburse the funds at Closing upon receipt of an Appraisal (defined in **§5.B.ii**) demonstrating the value of the Property exceeds \$500,000 and confirmation that the City and County have disbursed to the title company the monies to cover the City and County portion of the Purchase Price. Furthermore, DNR shall only make payment to the City for the purchase of the Property out of the Fund if the due diligence items and closing conditions set forth below and detailed on **EXHIBIT C** attached hereto (hereinafter the "Closing Conditions") are met to the satisfaction of DNR or its agents and the Easement is granted to Adams County and accepted thereby as set forth in this FA.

B. Performance Contingencies for DNR

DNR's performance hereunder is contingent upon successful completion or express waiver, done in accordance with the Closing Conditions enumerated on **EXHIBIT C** and each of the following conditions in this **§5.B**. If one or more of these Closing Conditions are not satisfied by Closing (as defined in this **§5.C.i**), and the Parties have not agreed in writing to allow additional time for satisfaction, then this FA shall automatically terminate and City and DNR shall be released from all further obligations and liabilities under this FA.

i. Approvals

Final approvals of this transaction shall be received from the following entities and persons:

- a. DNR;
- b. Adams County Board of County Commissioners;
- c. Brighton City Council; and
- d. State Controller's Office.

ii. Appraisal and Other Closing Conditions

a. Appraisal

City shall, at its sole cost and expense, have an appraisal completed in accordance with CRS §24-30-202(5)(b) that supports the expenditure of the DNR Fund Amount and is satisfactory to and accepted by DNR ("the Appraisal"). The Appraisal shall be acceptable to any review appraiser. Copies of all Appraisals ordered by City shall be provided to DNR and shall be no older than one year from the Closing Date.

b. Contract

City shall provide DNR with an executed copy of the contract between City and Seller relating to the purchase of the Property which form must be approved by DNR.

c. Reports

City shall at its sole cost and expense, cause qualified professionals to prepare a baseline report documenting the condition of the Property at the time of Closing, and signed by the City and the County, a geologist's remoteness report and a Phase I Environmental Assessment and should DNR deem them necessary, any additional environmental assessments on all or part of the Property if reasonably necessary to protect the interests of DNR. Copies shall be provided to DNR and such reports shall be acceptable to and approved by DNR as a condition to closing and each shall be certified to DNR.

iii. Title Inspection and Review

DNR's satisfaction with the title to the Property after the opportunity for physical inspection of the Property and after reviewing the documents and evidence of title thereto provided for in §5.B.iii is a Closing Condition. If any of DNR's objections made pursuant to this provision are not rectified to DNR satisfaction, then DNR may terminate this FA by written notice and both City and DNR shall be released from any further obligations hereunder.

a. Evidence of Title – Matters of Public Record

As soon as practicable, City, at its sole cost and expense, shall obtain a Title Commitment and copies of all schedule B-2 Exceptions. City shall also deliver to DNR copies of any abstracts of title covering all or any portion of the Property already in City's possession. "Title Commitment" means a current standard ALTA form commonly used by a title company authorized to do business in the State of Colorado that said title company uses before issuing a title policy insuring City's interest in the Property and Adams County's interest in the Easement together with, as applicable, any updates of the Title Commitment that are issued. Said Title Commitment and resulting policy shall insure City's interest in an amount not less than the Purchase Price.

b. Standard Title Exceptions

City shall require Seller to provide a Mechanic's Lien Indemnification Agreement and meet all other requirements for the deletion of or insuring over standard exceptions for mechanic's liens and defects, liens, encumbrances, adverse claims or other matters, if any are created, first appearing in the public records or attaching subsequent to the effective date of the Title Commitment of Schedule B-2 of the Title Commitment. City shall require Seller to cause the Title Commitment to delete or insure over the standard exceptions regarding unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing. If the City and DNR determine that one or more of the following items must be deleted in the title insurance policy, then City shall require Seller to cause the Title Commitment to delete or insure over the standard exceptions regarding (a) parties in possession, (b) unrecorded easements, (c) unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing. Any requirements for binding arbitration shall be removed from the final title policy to be issued by the title company (hereinafter the "Title Policy").

c. Exceptions - Title Review - Matters of Public Record

City, without cost or expense to DNR, shall promptly cause a copy of the Title Commitment together with the following documents to be delivered to DNR: (a) copies of all plats, declarations, covenants, conditions, and restrictions burdening the Property, and (b) copies of other documents (or, if illegible, summaries of such documents) listed in the Additional Exceptions of Schedule B-2 of the Title Commitment.

d. Title Review and Inspection - Matters Not Shown by the Public Records

City shall require Seller to deliver to City and DNR true copies of all lease(s), survey(s), and other similar unrecorded documentary information in Seller's possession pertaining to the Property, and shall require Seller to disclose in writing to City and DNR all easements, liens, or other title matters not shown by the public record of which Seller has knowledge. DNR and City shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

e. Unrecorded Burdens – City’s Liability

City shall, at its sole cost and expense, cause Seller to discharge and/or cure any liens, charges, defects, encumbrances, claims, or causes of action (hereinafter called "burdens") existing on or before Closing and incurred by City or Seller that attach to the Property which are not of record at the time of Closing and which were not disclosed pursuant to §5.B.iii.d.

iv. Easement

The City and County shall execute the Easement at the Closing. Such Easement shall be in a form approved by DNR prior to Closing.

C. CLOSING

i. Date and Time

The date and time of Closing shall be at the mutual agreement of City and Seller, but not later than 5:00 p.m. on October 1, 2014 (hereinafter the “Closing”). Closing shall occur at the offices of Chicago Title. At Closing Seller shall deliver to City a properly executed special warranty deed substantially in the form of **EXHIBIT D** and shall immediately be followed by the recording of the Easement as approved by DNR, and the City shall deliver to Seller payment of the Purchase Price. The DNR Fund at the direction of DNR may be in the form of a DNR warrant or electronic funds transfer, which shall be at DNR’s discretion. DNR’s payment shall be made under instructions (i) that said payment shall be returned to DNR if for any reason the acquisition of the Property and granting of the Easement and recording of both does not occur, and (ii) that evidence of funding of the remainder of the Purchase Price has been received from both the County and the City as well as any additional funds to be contributed to the Project by County and City.

ii. Closing at Title Company

The Closing shall be completed by the title company furnishing the Title Commitment and subsequent title insurance policy. Seller and City shall sign and complete all customary or required documents at or before Closing.

6. LIMITATION ON STATE LIABILITY

A. Definitions

i. Environmental Laws

“Environmental Laws” means any past, present or future federal, state or local law relating to (i) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials into the environment (including, without limitation, air, surface water, groundwater or land) or (ii) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials.

ii. Hazardous Materials

“Hazardous Materials” includes, without limitation, any material or substance that is (i) defined as a “hazardous substance” under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); (v) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. §6903); (vi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601); (vii) defined as a “regulated substance” pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. §6991); (viii) any hazardous or toxic materials, materials or wastes as now or hereafter designated or

regulated under any Environmental Law including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls, and freon and other chlorofluorocarbons.

B. REPRESENTATIONS, INDEMNITY, WAIVER, AND WARRANTIES

i. Due Diligence

City represents that it has conducted or will conduct its own due diligence related to the purchase of the Property and is not relying on any due diligence conducted or overseen by DNR in making the Purchase and waives any right to rely on any due diligence conducted or overseen by DNR, its employees, agents or contractors. City also waives any claims it may have in law or equity now or in the future against DNR and its employees, agents, and contractors based on due diligence conducted or overseen by or on behalf of DNR.

ii. Independent Professional Advice

City received such independent legal, environmental, and financial advice regarding its purchase of the Property as City deemed necessary and prudent to adequately protect its interests, and based thereon, and City's informed judgment, decided to continue with purchasing the Property.

iii. Indemnification

City is aware that the Property may contain Hazardous Materials and may be in violation of Environmental Laws. With full knowledge of the risks involved, City wishes to proceed with the purchase of the Property despite the possible presence of Hazardous Materials thereon. If any liability attaches to DNR, its employees, agents or contractors for violations of Environmental Laws due to the presence of Hazardous Materials on the Property, City shall to the extent permitted by Colorado law defend, indemnify, save, and hold DNR, its employees, agents and contractors harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorney fees, consultant fees and expert fees) which arise. Such indemnification also includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials, pollutants, or contaminants present in the soil or groundwater on or under the Property. Nothing in this FA shall be construed as giving rise to any right or ability in DNR, nor shall DNR have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended ("CERCLA"). This prohibition does not impose liability on DNR nor shall DNR be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.

7. PAYMENTS-MAXIMUM AMOUNT

The maximum amount payable under this FA to the City by DNR is \$500,000, as determined by DNR from available funds sourced as set forth in §3.A.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

Each Party shall treat the confidential information of the other Party with the same degree of care and protection it affords to its own confidential information. Each Party shall notify the other Party immediately if it receives a request or demand from a third party for records or information of the other Party.

9. NOTICE AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

DNR

c/o Anne Kelson
Real Estate Manager
Division of Parks and Wildlife
Denver, CO 80216
anne.kelson@state.co.us

With a copy to:

Maggie Van Cleef
Purchasing Director
1313 Sherman Street #423
Denver, CO 80203
maggie.vancleef@state.co.us

City of Brighton

Gary Wardle
Director of Parks & Recreation
City of Brighton
500 S. 4th Avenue
Brighton, CO 80601
gwardle@brightonco.gov

City Attorney's Office
21 N. 1st Avenue, Suite 290
Brighton, CO 80601
cmernst@mmlc.com

10. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the City (Contractor for purposes of this §10) under this FA (Contract for purposes of this §10) is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the

Department of Natural Resources, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

11. GENERAL PROVISIONS

A. Assignment

The rights and obligations of each Party hereunder are personal to such Party and may not be transferred, assigned or subcontracted without the prior, written consent of the other Party.

B. Order of Precedence

In the event of conflicts or inconsistencies between this FA and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Colorado Special Provisions, the remainder of the provisions of this FA, and then the Exhibits.

C. References

All references in this FA to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

D. Third Party Beneficiaries-Negation

Enforcement of all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this FA are incidental and do not create any rights for such third parties.

E. Entire Understanding

This FA represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification

To the extent permitted by Colorado law, City shall indemnify, save, and hold harmless DNR, its employees and agents, against any and all claims, damages, liability and court awards, up to the amount of the Purchase Price, together with costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by City, or its employees, agents, subgrantees, or assignees pursuant to the terms of this FA; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits or actions related to this FA shall be filed and proceedings held in the State of Colorado and venue shall be in the County in which the Property is located. Venue shall be proper in any county in which the Property is located if it is situated in more than one county.

H. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this FA requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if City fails to perform or comply as required.

I. CORA Disclosure

To the extent not prohibited by federal law, this FA and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

J. Performance Outside the State of Colorado and/or the United States

Following the Effective Date, Contractor shall provide written notice to the State, in accordance with §9 (Notices and Representatives), within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this §11.J shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this §11.J shall constitute a material breach of this Contract.

12. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Contracts except where noted in italics.

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Contract shall not be valid until it has been approved by the State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. COMPLIANCE WITH LAW.

The Parties shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

E. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

F. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

13. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT FUNDING AGREEMENT

Persons signing for Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.

<p style="text-align: center;">GRANTEE</p> <p style="text-align: center;">The City of Brighton, a Colorado municipal corporation</p> <p>By: _____</p> <p>Title: _____</p> <p style="text-align: center;">_____ <i>Signature</i></p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">John W. Hickenlooper, Governor acting by and through the Department of Natural Resources</p> <p>By: _____ Robert Randall, Deputy Director</p> <p>Date: _____</p>
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ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>	
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EXHIBIT A (Legal Description of Property)

EXHIBIT B (Adams County Grant Agreement)

EXHIBIT C (Closing Conditions)

City shall provide the following Due Diligence Items to DNR for approval prior to Closing and the disbursement of Funds

At least 30 days before closing:

1. Executed Purchase and Sale Agreement
2. Title Commitment and related documents per §5
3. Water Rights due diligence demonstration

At least 10 days before Closing:

4. Draft Conservation Easement
5. Survey (if necessary)
6. Execution of acknowledgement of state's limitation on liability
7. Phase 1 Environmental Site Assessment
8. Geologist's Mineral Assessment

At least 7 days before Closing:

9. Approved Appraisal and Review Appraisal
10. Baseline Report
11. Wire Transfer Instructions, Draft Settlement Statement and Closing Instructions
12. Resolution or proof of authority to accept property interest
13. Draft of all other documents to be signed/recorded at Closing

EXHIBIT D (Special Warranty Deed)

See attached.



Parks & Community Resources Department
Adams County Regional Park

9755 Henderson Road, Brighton, CO 80601
PHONE 303.637.8000 FAX 303.637.8015

MEMORANDUM

TO: Doug Edelstein, County Attorney's Office
Mark Moskowitz, Commissioners' Office

FROM: Renee Petersen, Parks and Community Resources *RP*

THROUGH: Shannon McDowell, Parks and Community Resources *SM*

DATE: July 18, 2014

RE: Conservation Easement City of Brighton Eagle Preserve Property

Doug – Please review the attached conservation easement for the City of Brighton Eagle Preserve property. You reviewed and approved the electronic file for this document on July 16, 2014. Please review and sign at the point indicated by the multi-colored tags (on the right hand side of the page). Please forward this to Mark once you have approved it.

Mark – Attached is public hearing packet to execute the conservation easement for the City of Brighton Eagle Preserve property. The conservation easement is required in order to receive grant fund reimbursement from the Adams County Open Space grant program. The originals are being sent directly to Doug for his signature and will be forwarded to you.

Please return the signed copy as soon as possible..

Thank you.

**RESOLUTION ACCEPTING THE DEED OF CONSERVATION
EASEMENT ON THE EAGLE PRESERVE PROPERTY**

WHEREAS, Adams County voters approved an Open Space Sales Tax on November 2, 1999, to be used in accordance with Resolution 99-1; and

WHEREAS, the City of Brighton received an Open Space Sales Tax grant on May 23, 2012 for the acquisition of the Eagle Preserve property, which is comprised of 42.2 acres directly adjacent to Lutz Lake, Higgins Lake, and Meggers Lake; and,

WHEREAS, pursuant to the Open Space Sales Tax Policies and Procedures, upon acquisition of the Eagle Preserve property, Brighton is required to place a conservation easement on the property to preserve passive use of the property in perpetuity; and

WHEREAS, Brighton is working to acquire the Eagle Preserve property and desires that Adams County holds the conservation easement on the property once acquisition is complete; and

WHEREAS, Adams County desires to accept the conservation easement; and

WHEREAS, the conservation easement will be effective as of the date that the easement is recorded with the Clerk and Records Office.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners, County of Adams, State of Colorado, that the Eagle Preserve Conservation Easement, a copy of which is attached hereto and incorporated herein by this reference, be and hereby is approved.

BE IT FURTHER RESOLVED that the Chair is authorized to execute said Conservation Easement on behalf of Adams County.

Motion

I move that the resolution accepting the Eagle Preserve Conservation Easement be and hereby is approved.
--



PUBLIC HEARING AGENDA ITEM

DATE: July 17, 2014
SUBJECT: Deed of Conservation Easement on the City of Brighton's Eagle Preserve Property
FROM: Parks, Renee Petersen, 303.637.8072
AGENCY/DEPARTMENT: Parks & Community Resources Department
RECOMMENDED ACTION: That the Board of County Commissioners approve the deed of conservation easement. Fully executing the deed of conservation easement will ensure that the 42.2 acre Eagle Preserve property will be preserved for its scenic, natural, open space and recreational benefits along South 27 th Avenue and Eagle Boulevard.

BACKGROUND:

In February 2012, the City of Brighton submitted an application to the Open Space Sales Tax grant program requesting funding for acquisition of the Eagle Preserve property, located southwest of South 27th Avenue and Eagle Boulevard. The Eagle Preserve property is approximately 42.2 acres in size. The property is adjacent to Lutz, Higgins, and Meggers Lake where habitat exists for many species. The property will provide protection and enhance a valuable resource within the County and create a visual open space adjacent to and surrounded by residential and commercial developments. This property has wetlands, a dry lake bed, and farmed land that could serve as a prairie habitat in the future. It will attract wildlife, eagles, and other bird species.

On May 23, 2012, the City of Brighton received an Open Space Sales tax grant award for the acquisition of the Eagle Preserve property. The City of Brighton was awarded 40% of the total project costs, not to exceed \$400,000 for the acquisition of this property.

The City of Brighton is working to acquire this property. They plan to record the executed conservation easement once they have acquired the deed to the property. This project has requested one extension to the original grant agreement. The current due date for this project is September 23, 2014.

Pursuant to the Open Space Policies and Procedures, the City of Brighton is required to place a deed of conservation easement on the 42.2 acres acquired using open space sales tax grant funds to protect passive use of the property in perpetuity. The deed of conservation easement has been approved as to form by the County Attorney's Office and is now awaiting final signature by the Chairman of the Board of County Commissioners to become fully executed.

AGENCIES, DEPARTMENTS OR OTHER OFFICES INVOLVED:

N/A

ATTACHED DOCUMENTS:

Deed of Conservation Easement

FISCAL IMPACT:

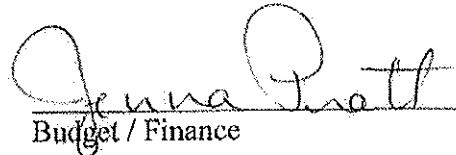
Either mark X ____ if there is no fiscal impact or provide the following information for the recommended action:

Fund(s):	28
Cost center(s):	6202.8810
Self-generated / dedicated revenues:	\$400,000
Annual operating costs:	\$0
Annual net operating (cost) / income:	\$0
Capital costs:	\$400,000
Expenditure included in approved operating budget:	\$0
Expenditure included in approved capital budget:	\$400,000
New FTEs requested:	0

APPROVAL SIGNATURES:

APPROVAL OF FISCAL IMPACT:

Todd Leopold, County Manager


Budget / Finance

Raymond H. Gonzales, Deputy County Manager

Ed Finger, Deputy County Manager

DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT is made this ____ day of _____ 2014, by the City of Brighton, a Colorado home rule municipality having its address at 500 South 4th Avenue, Brighton, CO 80601 ("Grantor"), in favor of the Adams County Board of County Commissioners, a political subdivision of the State of Colorado, having its address at 4430 South Adams County Parkway, Brighton, CO 80601 ("Grantee").

RECITALS:

- A. Grantor is the sole owner in fee simple of certain real property in Adams County, Colorado, more particularly described in Exhibit A attached hereto and generally depicted on the map attached hereto as Exhibit B, both of which are incorporated herein by this reference (the "Property").
- B. The acquisition of the Property was partially funded by an Adams County Open Space grant funded by the Adams County Open Space Sales Tax which was passed by the Adams County voters in 1999, and reauthorized in November 2004, to be extended until December 31, 2026. The adopted Adams County Open Space Policies and Procedures require projects receiving passive funds for land acquisition to preserve the Property in perpetuity with a conservation easement. The parties acknowledge Grantor's intent to utilize the property as agricultural and natural open space with associated passive recreation uses.
- C. The Property possesses natural, scenic, open space, and/or recreational values (collectively, "Conservation Values") of great importance to Grantor, the people of Adams County and the people of the State of Colorado. In particular, the Property provides the following conservation values:
 - 1) Natural: The Property contains valuable wetlands, riparian, and upland habitats in a quickly developing area of the City of Brighton. The Property often serves as a stopover for birds and other wildlife migrating from Barr Lake to the South Platte River corridor.
 - 2) Scenic: The Property is directly adjacent to additional open space and future park property and will provide a visual buffer from development on the east and the Front Range to the west.
 - 3) Open Space: The Property is in a quickly developing area of the City of Brighton. The Property provides valuable open space qualities in an urbanized area.
 - 4) Recreational: The Property will be combined with additional nearby property to form a 178 acre open space property with many passive recreational opportunities, including trails, wildlife viewing, and

environmental education opportunities.

5) Agricultural: The Property is currently in agricultural production which provides a scenic visual buffer in a developing area.

- D. Grantor intends that the Conservation Values of the Property be preserved and protected, and that any uses be prohibited that would substantially diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of this Easement. The parties acknowledge and agree that the current land use patterns, including, without limitation, improvements located on the Property at the time of this grant, do not significantly impair or interfere with the Property's Conservation Values and are consistent with purposes of the Easement.
- E. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.
- F. Grantee is a governmental entity qualified under Sections 170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, and is a qualified holder of a conservation easement in gross under Colorado law.
- G. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this and future generations;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101 et seq., Grantor hereby voluntarily grants and conveys to Grantee a PERPETUAL conservation easement in gross over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose. The purpose of this Easement is to preserve and protect the Conservation Values of the Property in perpetuity. To achieve this Purpose, Grantor intends to convey this Deed of Conservation Easement to Grantee to ensure that the Conservation Values of the Property will be preserved and protected forever. Subject to the purpose of this Easement, Grantor and Grantee intend to permit only uses of the Property which do not substantially diminish or impair the Property's Conservation Values and to prevent any use of the Property that will substantially impair or interfere with protecting the Property's Conservation Values. It is the intent of the Grantor to preserve the Property in its natural, scenic, and/or open space condition to preserve the open space character, wildlife habitat, and scenic qualities of the Property. Notwithstanding the foregoing, nothing in this Easement is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Property's Conservation Values.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- a. To preserve and protect the Conservation Values of the Property;
- b. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
- c. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement; and
- d. To require the restoration of such areas or features of the Property that may be damaged by any inconsistent use.

3. Reserved Rights. Grantor reserves to itself, its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited or restricted herein and that do not substantially diminish or impair the Property's Conservation Values. Other agreed upon reserved rights are as follows:

- a. The right to allow non-commercial, non-motorized, passive recreational activities, such as horseback riding, hiking, cross-country skiing, mountain biking, cycling, picnicking and other similar low-impact recreational uses, to be enjoyed by the public. Notwithstanding the foregoing, the use of motorized wheelchairs or other mobile devices by disabled persons and other persons as may be required by the Americans With Disabilities Act, on trails and other publicly accessible areas is allowed.
- b. Grantor reserves the right to construct, improve, maintain, repair, replace or remove certain amenities related to passive recreational activities including signage, benches, fencing, and gates without prior Grantee approval. Subject to prior written approval of Grantee, Grantor reserves the right to construct, replace, or remove the following amenities related to passive recreational activities including but not limited to shelters, hard and soft surfaced trails, restrooms, storage, pedestrian underpasses or bridges, and lighting. Without limiting the foregoing, Grantor reserves the right to maintain and repair amenities related to passive recreational activities including but not limited to shelters, hard and soft surfaced trails, restrooms, storage, pedestrian underpasses or bridges, and lighting without prior Grantee approval. Any such use or work shall be performed in such a way as to minimize the negative impact such use or work would have on the Conservation Values of the Property.
- c. The right to lease the Property for agricultural use consistent with this Easement.
- d. The right to re-vegetate the Property with native plants and grasses.

- e. The right to construct trail connections between the Brighton Lakes subdivision and the 27th Avenue alignment, for purposes of paragraph 3.a. above and subject to the restrictions of paragraph 4.l. below.

4. Prohibited and Restricted Uses. Except as provided in paragraph 3 above, any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. Development Rights. Grantor hereby grants to Grantee all development rights except as otherwise expressly reserved by Grantor herein, and the parties agree that such rights are hereby released, terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise or used for the purpose of calculating permissible lot yield of the Property or any other property.

- b. Existing Structures and Improvements. There is one residential structure and six (6) additional structures on the northern parcel of this property. At some point in the future, Grantor intends to remove said structures without further approval of Grantee.

- c. Construction of Buildings and Other Structures. The construction of any parking lots, restroom facilities, picnic areas, or other similar improvements shall not be allowed without the express written approval of the Grantee, except as described below:

1) A three (3) acre, more or less, building area is located on the Property as described and depicted on the attached Exhibit B-1 (the “**Building Area**”). At the time of granting of this Easement the following structures are located within the Building Area: seven (7) existing structures including existing farmhouse, barns, sheds, out-buildings, fences, gates, access drives, drive-ways and parking areas. Subject to the provisions of paragraph 3.b., and for purposes of establishing an open space “trail-head” area, Grantor may remove any or all of the existing improvements and construct a paved parking lot and related improvements within the Building Area without further approval of Grantee.

- d. New Structures and Improvements. Under no circumstances shall any recreational building, structure or improvement, except as provided in paragraph 3, be built on the Property, including but not limited to, athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or shooting ranges. No new residential buildings shall be allowed.

- e. Fences. The construction or reconstruction of any fences shall not be permitted, except to repair or replace existing fences, to build new fences for purposes of reasonable and customary management of livestock and

wildlife; to build, repair or replace fences for purposes related to future trails located on the Property; or for separation of ownership and uses.

- f. Subdivision. Any division or subdivision of title to the Property, whether by physical or legal process, is prohibited.
- g. Timber Harvesting. Trees may be cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Dead trees may also be cut for firewood and other uses on the Property. No commercial timber harvesting shall be allowed.
- h. Mining. (1) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance of any kind or description, using any surface mining method is prohibited. Mining utilizing methods other than surface mining may be permitted if the method of extraction has a limited, localized impact on the Property that is not irretrievably destructive of the Conservation Values. No extraction permitted pursuant to this paragraph shall occur without prior written notice to and approval of Grantee, which notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof. Any lease, surface use agreement, or other conveyance by Grantor to a third party of mineral rights subsequent to the date of recording of this Easement shall be subject to the restrictions of this Easement and shall so state, shall contain terms consistent with the provisions of this Easement, and a copy of the same shall be provided to Grantee prior to its execution by Grantor for Grantee's review and approval.

(2) Grantor agrees that by granting this Easement to Grantee, it has granted to Grantee a portion of its rights as owner of the surface of the Property on which the exploration, development, operations and reclamation of any minerals (including but not limited to oil and gas, helium, carbon dioxide and coalbed methane) may be conducted ("Surface Owner"). Grantor intends that Grantee, in addition to its interest as a holder of this Easement, shall have the rights of a Surface Owner to receive notices of proposed mineral activities and to take appropriate action to protect the Purpose of this Easement. Accordingly, Grantor agrees: (i) to provide Grantee with any notices Grantor receives related to the exploration, development, operations and reclamation of any minerals; and (ii) that Grantee must approve in advance in writing any lease or agreement pertaining to use of the surface or subsurface of the Property for the exploration, development, operations and reclamation of any minerals, including any agreement permitted or required of a Surface Owner under C.R.S. §34-60-101 et seq., as amended from time to time, and rules and regulations promulgated thereunder ("Surface Use Agreement"), between Grantor and owners or lessees of minerals (including but not limited to oil and gas, helium, carbon dioxide and coalbed methane),

which approval Grantee may withhold in its reasonable discretion if it determines that the proposed surface use would substantially diminish or impair the Conservation Values, is inconsistent with the preservation of the Conservation Values, is inconsistent with the terms of this Easement, or is not permitted under the terms of the mineral reservation or severance or the mineral lease.

(3) With respect to any mineral rights not currently owned by Grantor, whether or not mineral development is currently occurring, Grantor irrevocably assigns and grants to Grantee the same legal rights as Grantor would have, if any, to influence and control impacts to the surface of the Property from mineral development. Such rights may include, but are not be limited to, the right to take whatever legal action Grantee deems necessary in order to respond to proposals regarding mineral development affecting the surface of the Property, including bringing judicial or administrative actions.

- i. Paving and Road Construction. Except for the maintenance, repair and improvement of established public rights of way abutting the Property boundary (i.e. 144th Avenue and 19th Avenue alignments), no other portion of the Property shall be paved nor shall any road be constructed without the prior written approval of Grantee, except as allowed under subparagraphs 3.e and 4.c above. Grantee shall give such permission within a reasonable time, unless Grantee determines that the proposed paving or covering of the soil, or the location of any road, will substantially diminish or impair the Conservation Values of the Property or is otherwise inconsistent with this Easement, and such permission shall not be unreasonably withheld.
- j. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is prohibited.
- k. Water Rights. No water rights are included with this Easement.
- l. Motorized Vehicles. Motorized vehicles are prohibited, except for vehicles utilizing trailhead drive and parking lot areas, and for public maintenance, management, and safety vehicles.
- m. Commercial or Industrial Activity. No industrial or commercial uses are allowed on the Property.
- n. Signs or Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary "no trespassing" signs and signs informing the public of the status of ownership. Grantor also reserves the right to erect trail and interpretive signs. No signs shall significantly diminish or impair

the Conservation Values of the Property. Grantor shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Grantee, identifying the Grantee's investment in this Property to the public.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

6. Grantee's Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

7. Enforcement. If Grantee finds what it believes is a violation of this Easement, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either: (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation.

8. Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantors prevail in an action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

9. Grantee's Discretion. Enforcement of the terms of this Easement shall be

at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

10. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription, including any defenses available under C.R.S. § 38-41-119, et seq.

11. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall be responsible for preventing activities by third parties on or affecting the Property that may violate the terms of this Easement.

12. Access. The public shall generally have access to the Property, at such times and in such manner as Grantor may reasonably prescribe by regulation, so that the Conservation Values of the Property are not impaired.

13. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and including the maintenance of adequate comprehensive general liability insurance coverage.

14. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate.

15. Hold Harmless. To the extent allowed by Law, Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to

any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in Paragraph 7 herein; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

16. Real Property Interest. This Easement constitutes a real property interest immediately vested in Grantee. The parties stipulate that this Easement has a fair market value equal to forty percent (40%) of the full fair market value of the Property, as unencumbered by this Easement. Full fair market value of the property shall be determined with a qualified appraisal commissioned by the Grantor. A qualified appraisal is one that is prepared by an independent appraiser in accordance with the IRS definitions of a qualified appraisal, specific about the full fair market value of the property, and effective within one year of the full fair market valuation of the property. For the purposes of this Easement, the ratio of the value of the Easement to the value of the Property as unencumbered by this Easement shall remain constant, notwithstanding anything in the Grantor's appraisal to the contrary.

17. Condemnation or Other Extinguishment. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, or if circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other party in writing when it first learns of such circumstances. Grantee shall be entitled to compensation in accordance with applicable law, after the satisfaction of prior claims, from any sale, exchange, condemnation, or other involuntary or voluntary conversion of all or any portion of the Property subsequent to such termination or extinguishment. Grantee's compensation shall be forty percent (40%), an amount equal to the Grantee's real property interest in the property, multiplied by the value of the unencumbered fee simple interest in the portion of the Property that will no longer be encumbered by this Easement as a result of condemnation or termination. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Easement or in accordance with the passive uses described in Resolution 99-1 which can be found on file with the Adams County Clerk and Recorder's Office at Reception Number C0590506.

18. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that (a) is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, (b) is authorized to acquire and hold conservation

easements under Colorado law, and (c) agrees to assume the responsibility imposed on Grantee by this Easement. Grantee agrees to give written notice to Grantor of the transfer of this Easement at least forty-five (45) days prior to the date of such transfer.

19. Subsequent transfers. Grantor shall incorporate the terms and conditions of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

20. Notices. Any notice, demand, request, consent, approval, or communication that either party is required to give to the other in writing shall be either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: City Manager
City of Brighton
500 S. 4th Ave.
Brighton, CO 80601

To Grantee: Adams County
4430 South Adams County Parkway
Brighton, CO 80601

or to such other address as either party from time to time shall designate by written notice to the other.

21. Grantor's Title Warranty. Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through, or under Grantor.

22. Subsequent Liens on the Property. No provisions of this Easement shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Easement.

23. Recording. Grantee shall record this instrument in timely fashion in the official records of each county in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Easement.

24. General Provisions.

a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado, and venue for any dispute shall be in Adams County, Colorado.

b. Liberal Construction. Any general rule of construction to the

contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of C.R.S. §38-30.5-101, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Joint Obligation. If more than one owner owns the Property at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners.

g. Non-Merger. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the parties expressly state that they intend a merger of estates or interests to occur.

h. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

i. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

j. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

k. No Third Party Enforcement. This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor and

Grantee and their respective successors and assigns for the purposes set forth herein, and does not create rights or responsibilities in any third parties beyond Grantor and Grantee.

l. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws. Any amendment must be consistent with the conservation purposes of this Easement and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of the County in which the Property is located.

m. Change of Conditions. A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for continued use of the Property for conservation purposes and shall not constitute grounds for terminating the Easement.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this Deed of Conservation Easement on the day and year first written above.

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

Chairman Date

ATTEST:

KAREN LONG,
CLERK AND RECORDER

Approved as to form:

Deputy Clerk

Adams County Attorney's Office

CITY OF BRIGHTON, COLORADO

Mayor Date

ATTEST:

Approved as to form:

City Clerk

City Attorney's Office

CHICAGO TITLE INSURANCE COMPANY

Title No.: 1505746

LEGAL DESCRIPTION EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ADAMS, STATE OF COLORADO, AND IS DESCRIBED AS FOLLOWS:

Parcel One: (Fee)

A parcel of land being a portion of the West half of the Northeast Quarter and the West half of the Southeast Quarter of Section 20, Township 1 South, Range 66 West of the 6th Principal Meridian, Adams County, Colorado, described as follows:

Basis of Bearings: The West line of the Northeast Quarter of said Section 20, being assumed to bear South 00 degrees 15 minutes 10 seconds West.

Commencing at the North Quarter corner of said Section 20;

Thence, along said West line, South 00 degrees 15 minutes 10 seconds West, a distance of 30.00 feet to the Point of Beginning;

Thence, continuing along said West line, South 00 degrees 15 minutes 10 seconds West, a distance of 2617.73 feet to the center of said Section 20;

Thence, along the West line of said Southeast Quarter, South 00 degrees 39 minutes 00 seconds East, a distance of 30.00 feet;

Thence North 89 degrees 25 minutes 50 seconds East, a distance of 675.30 feet;

Thence South 00 degrees 39 minutes 00 seconds East, a distance of 794.50 feet;

Thence North 84 degrees 31 minutes 20 seconds East, a distance of 485.53 feet;

Thence North 11 degrees 04 minutes 37 seconds East, a distance of 537.52 feet;

Thence North 00 degrees 11 minutes 13 seconds West, a distance of 250.00 feet to the North line of said West half of the Southeast Quarter;

Thence, along said North line, South 89 degrees 40 minutes 13 seconds West, a distance of 211.65 feet;

Thence North 06 degrees 13 minutes 49 seconds West, a distance of 832.31 feet;

Thence South 87 degrees 25 minutes 43 seconds West, a distance of 50.55 feet;

Thence South 89 degrees 40 minutes 16 seconds West, a distance of 243.12 feet;

Thence North 00 degrees 11 minutes 13 seconds West, a distance of 1791.67 feet;

Thence South 89 degrees 40 minutes 16 seconds West, a distance of 450.88 feet to the Point of Beginning,

EXCEPT ANY PORTION THEREOF described in Warranty Deed recorded December 28, 1998 in Book 5593 at Page 256

County of Adams, State of Colorado.

Parcel Two: (Easement)

Beginning at the West 1/4 of Section 20, Township 1 South, Range 66 West of the 6th P.M.;

Thence East 70 rods to the True Point of Beginning;

Thence South 25 feet;

Thence East 2,555 feet;

Thence North 25 feet;

Thence West 2,555 feet to the Point of Beginning;

Issued at: DENVER, COLORADO

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LEGAL DESCRIPTION
EXHIBIT "A"
(Continued)

and:

Beginning at the East 1/4 corner of Section 20, Township 1 South, range 66 West of the 6th P.M.,
Thence South 25 feet;
Thence West 1320 feet;
Thence North 25 feet;
Thence East 1320 feet to Point of Beginning,

and:

The North 25 feet of the following described land: COMMENCING at a point 863 feet South of North line of West ½ of Southeast ¼ of Section 20, Township 1 South, Range 66 West of 6th P.M. and 140 feet West of East line of said West ½ of Southeast ¼, thence E 140 feet to said East Line, thence North along said East line 863 feet to the Northeast corner of said West ½, thence West along said North line 256 feet, thence South parallel with said East line 250 feet, thence by direct course 621 feet, more or less, to Place of Beginning.

all in Section 20, Township 1 South, Range 66 West of the 6th P.M., County of Adams, State of Colorado.

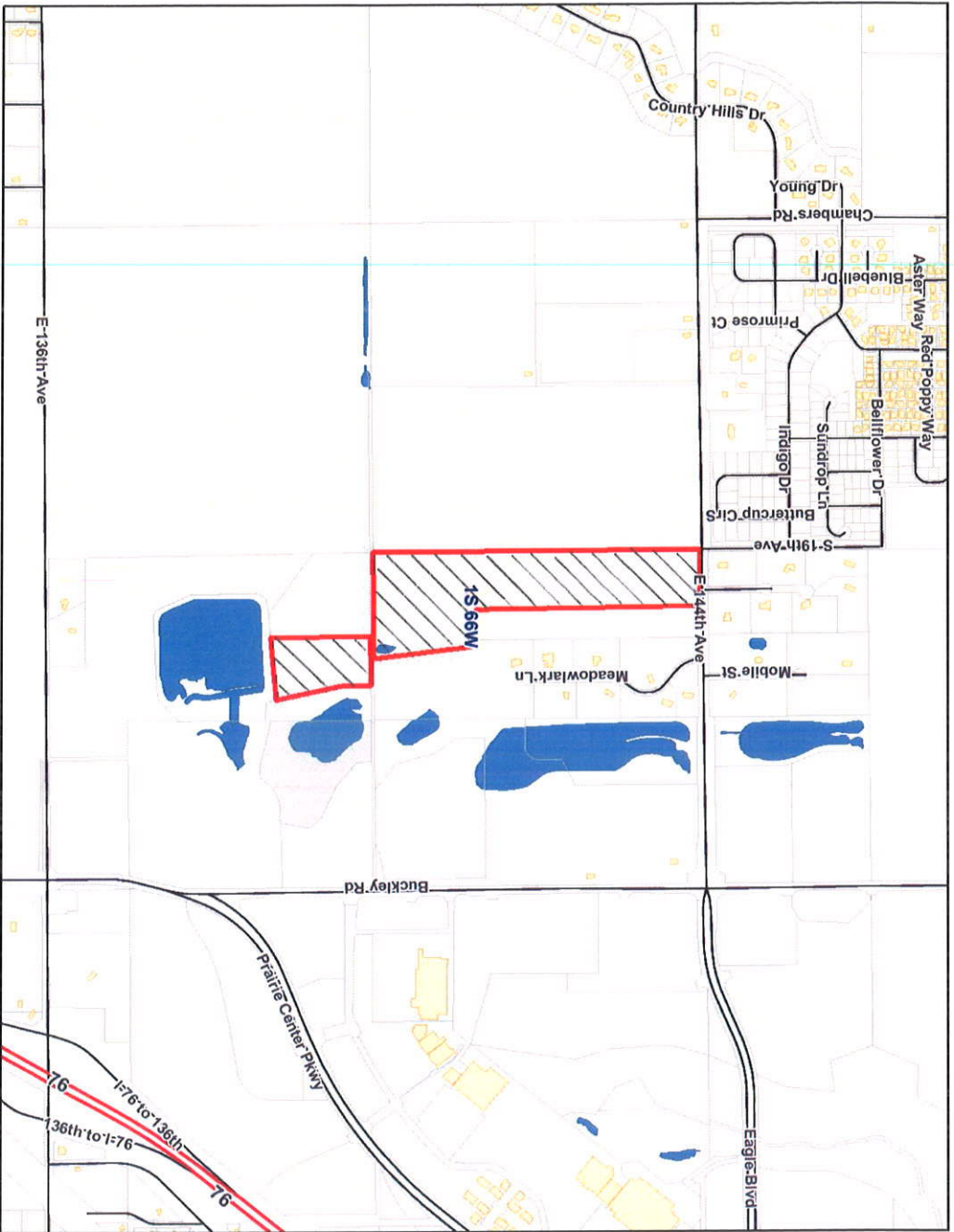
Issued at: DENVER, COLORADO

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EXHIBIT B



This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Notes: Eagle Preserve Conservation Easement
Location Map

Map center: 3196946, 1772695



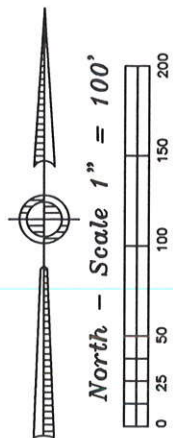
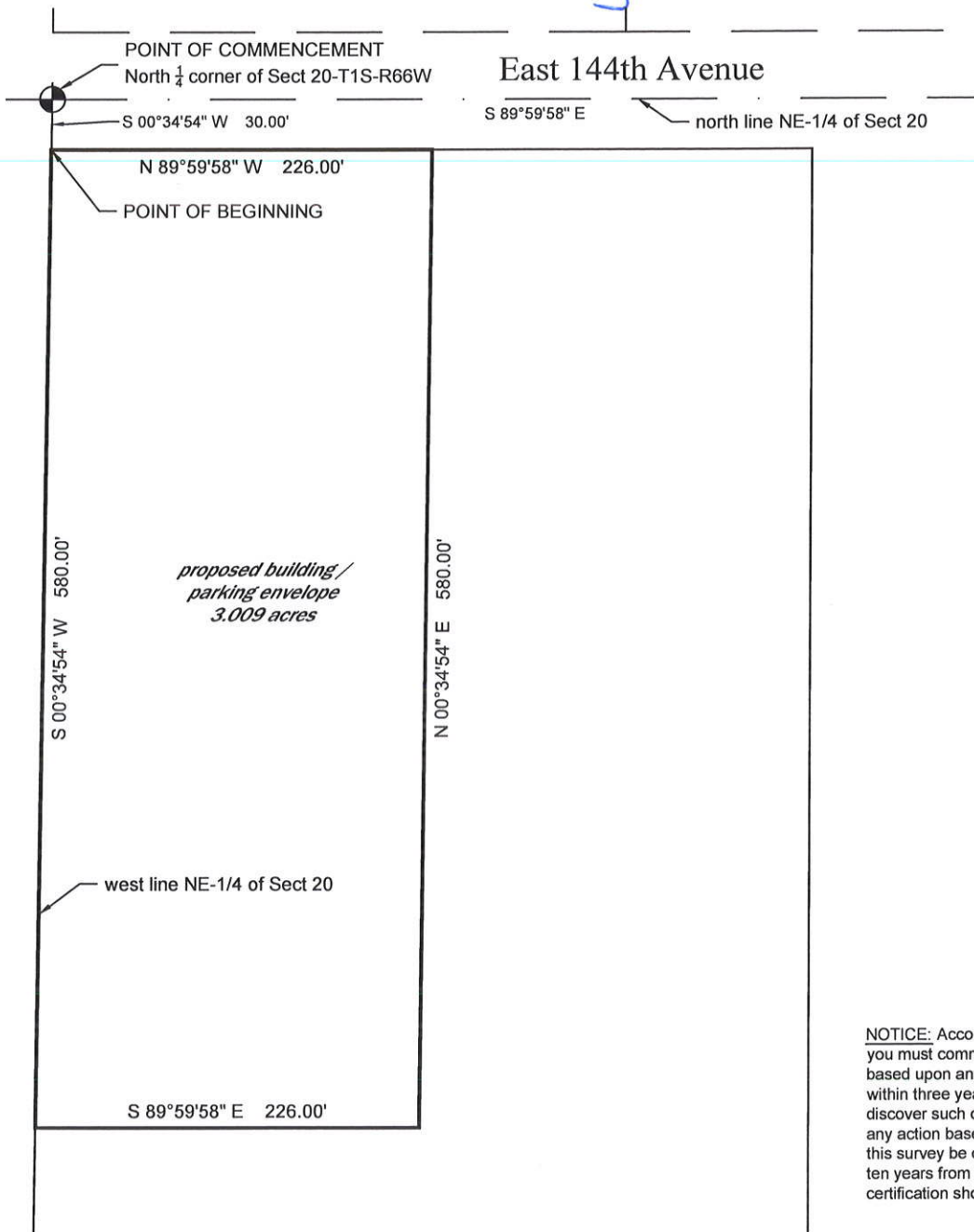
Scale: 1:16,174

Legend

- County Boundary
- Adjacent Counties
- Township
- Streets
- Hwy outline
- Road outline
- Interstates
- US, State Hwys
- Tollways
- Streets/Roads
- Residential Buildings
- Parcels
- Lakes

Description Exhibit-B-1

Building Area



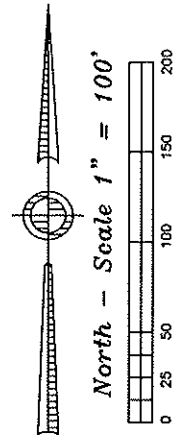
NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

page 1 of 2

Z:\Project\2012\12001\dwg\12001.dwg July 22, 2014 - 10:13am

#	Date	Revisions	Field Date n/a	Prepared for:	Project#: 12001.006
			Party Chief n/a	City of Brighton	<div> <div>PLS Group, LLC</div> <div>6843 North Franklin Avenue</div> <div>Loveland, Colorado 80538</div> <div>Office 970.669.2100 - Fax 970.669.3652</div> </div>
			Survey Tech n/a		
			Proj. Manager MBS		
			Scale 1"=100'		

Description Exhibit



Description:

Commence at the North ¼ Corner of Section 20, Township 1 South, Range 66 West of the 6th Principal Meridian, Adams County, Colorado being more particularly described as follows.

Assuming the west line of the Northeast ¼ of Section 20, Township 1 South, Range 66 West of the 6th Principal, Adams County, Colorado as being S 00° 34' 54" W with all bearings herein relative thereto.



COMMENCE at the North ¼ Corner of Section 20, Township 1 South, Range 66 West of the 6th Principal Meridian, Adams County, Colorado;
 thence S 00° 34' 54" W along the west line of the Northeast ¼ of said Section 20 for a distance of 30.00 feet to the POINT OF BEGINNING;
 thence continue S 00° 34' 54" W along said west line for a distance of 580.00 feet;
 thence leaving said west line S 89° 59' 58" E parallel with the north line of said Northeast ¼ for a distance of 226.00 feet;
 thence N 00° 34' 54" E parallel with said west line for a distance of 580.00 feet;
 thence N 89° 59' 58" W parallel with said north line for a distance of 226.00 feet to the Point of Beginning.

Containing 3.009 acres, more or less and being subject to any easements or rights of way of record.

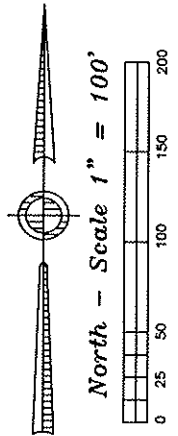
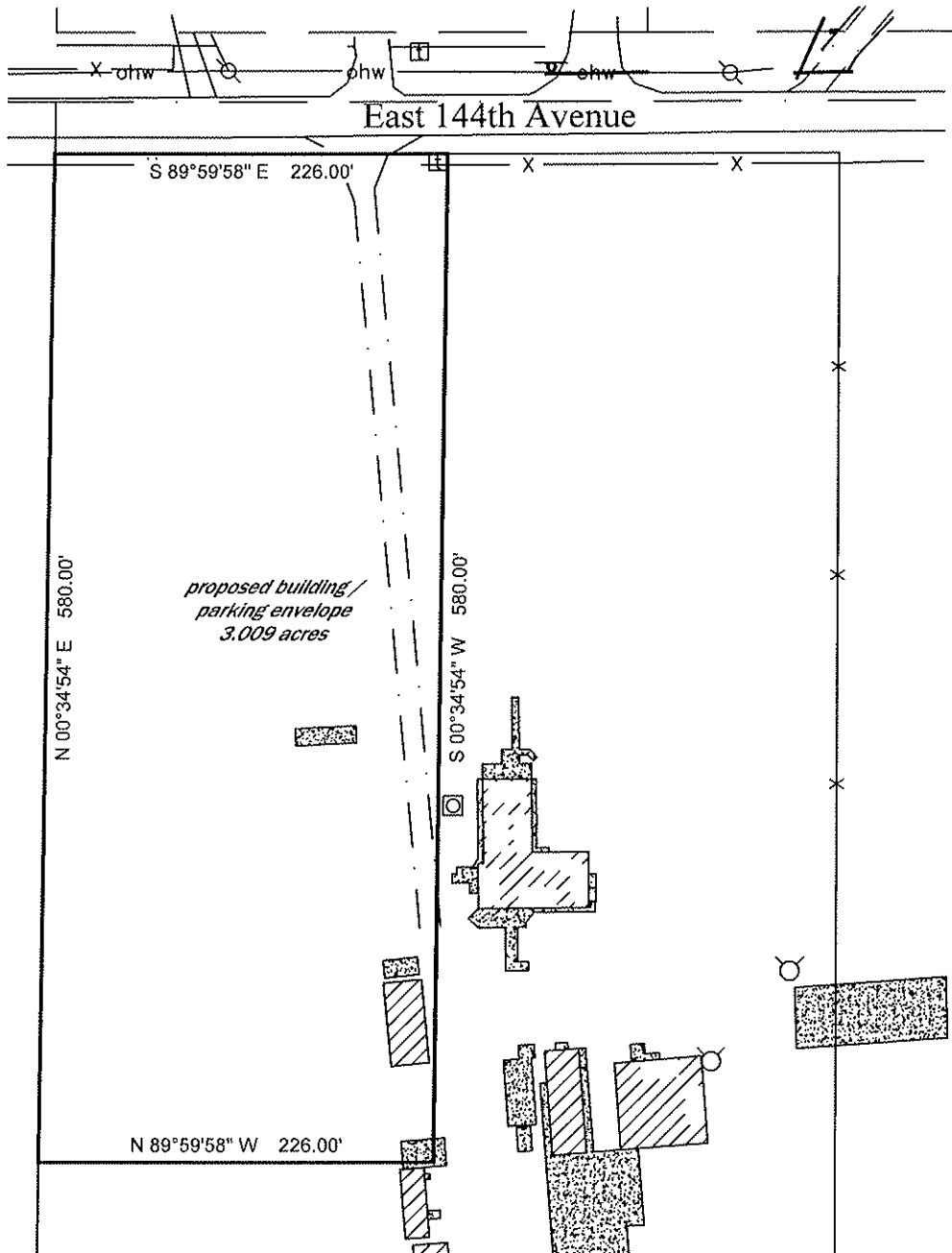
NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

page 2 of 2

Z:\Project\2012\12001\dwg\12001.dwg July 22, 2014 - 10:14am

#	Date	Revisions	Field Date n/a	Prepared for:	Project#: 12001.006
			Party Chief n/a	<div>City of Brighton</div> <div>  <div> PLS Group, LLC 6843 North Franklin Avenue Loveland, Colorado 80538 Office 970.669.2100 - Fax 970.669.3652 </div>  </div>	
			Survey Tech n/a		
			Proj. Manager MBS		
			Scale 1"=100'		

Description Exhibit



Z:\Project\2012\12001\dwg\12001.dwg July 15, 2014 - 1:27pm

#	Date	Revisions	Field Date n/a	Prepared for:	Project#: 12001.006
			Party Chief n/a	City of Brighton	
			Survey Tech n/a		
			Proj. Manager MBS	<div> <div> <div></div> <div>PLS Group, LLC</div> <div>6843 North Franklin Avenue</div> <div>Loveland, Colorado 80538</div> <div>Office 970.669.2100 - Fax 970.669.3652</div> </div> <div></div> </div>	
			Scale 1"=100'		



**City Council
Agenda Item
8H**

HUMAN RESOURCES OFFICE

Reference: ***2014 FPPA Contribution Rate Election***

To: Mayor Richard N. McLean and Members of City Council
Through: Manuel Esquibel, City Manager



Prepared By: Karen Borkowski Surine, Human Resources Director

Date Prepared: July 15, 2014

PURPOSE

To approve a Resolution increasing the Fire Police Pension Association (FPPA) member contribution rate to the FPPA Statewide Defined Benefit Plan (SWDB) by 2%, phased in at a 1/4% increase per year over 8 years beginning in January 2015.

BACKGROUND

The City of Brighton sworn police officers became members of the FPPA SWDB Plan in 2005. State statutes provide that if a plan modification is approved by at least 65% of the active members of the plan who vote in the election proposing an increase in member contribution rates, the proposal must also be approved by more than 50% of the eligible employees who vote. FPPA Resolution 2014-05 certifies that all requirements of the applicable statutes and plan documents have been met. The final step in the implementation process is for City Council to submit their vote via the proposed Resolution. If Council approves the proposed Resolution, a signed copy of the Resolution will be sent to FPPA prior to August 22, 2014. FPPA will tabulate the results and make the results available in September.

State legislation mandates that employers not pick up the cost for the increased rate.

Eligible Brighton employees who voted for the measure approved the SWDB with 75% of eligible employees voting in favor of the increase and 25% voting against the increase.

FINANCIAL IMPLICATIONS

There is no impact to the employer contribution rate to the plan. The added funding is necessary to increase the plan's ability to pay retirees more meaningful benefit adjustments. The added funding reduces the likelihood that future benefits will need to be rolled back or further contribution rate increases would be needed. In essence, this rate increase will cover retiree cost of living increases.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO APPROVING AN FPPA EMPLOYER ELECTION REGARDING INCREASING THE MEMBER CONTRIBUTIONS RATE FOR THE STATEWIDE DEFINED BENEFIT PLAN FOR BRIGHTON POLICE OFFICERS BY AN ADDITIONAL TWO PERCENT (2%) OF BASE SALARY PAID; AUTHORIZING SAID INCREASE TO BEGIN IN JANUARY OF 2015; AUTHORIZING THE CITY MANAGER TO UNDERTAKE SUCH ACTIONS AS MAY BE REQUIRED TO IMPLEMENT SAID INCREASE; INSTRUCTING THE CITY CLERK TO PROVIDE A COPY OF THIS RESOLUTION TO THE FIRE AND POLICE PENSION ASSOCIATION NO LATER THAN AUGUST 22, 2014; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

RESOLUTION NO. _____

WHEREAS, Section 31-31-408(1.5), C.R.S., as amended, authorizes the Board of Directors of the Fire and Police Pension Association (“the FPPA Board”) to increase the member contribution rate for pension benefits for participating public safety officers with respect to the members of the Statewide Defined Benefit Plan (“the Plan”), as established pursuant to Section 31-31-402, C.R.S., upon the meeting of certain conditions; and

WHEREAS, pursuant to FPPA Resolution No. 2014-05, the FPPA Board has directed an election of the participating Employers in the plan be conducted with regard to an increase in the member contribution rate for the Plan by an additional 2% of base salary, to be implemented by an annual increase in the member contribution of 1/4% of base salary paid beginning in 2015. The member contribution rate shall be increased by an additional 1/4% of base salary paid in each of the 7 following years, through 2022, until the cumulative increase in the member contribution rate is 2% of base salary paid; and

WHEREAS, employees in the Brighton Police Department earn service credit towards retirement and are thereby members of the Plan administered by FPPA; and

WHEREAS, the City of Brighton City Council is thereby eligible to vote in the Employer election concerning the membership contribution rate, being conducted at the direction of the FPPA Board.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

1. The Brighton City Council hereby votes in FAVOR of increasing the member contribution rate for the FPPA Statewide Defined Benefit Plan, by an additional 2% of base salary paid.
2. The member contribution rate to the Statewide Defined Benefit Plan is increased 1/4% of base salary beginning in 2015.
3. The City Manager is authorized to undertake such actions as may be required to implement said increase.
4. The City Clerk’s Office is hereby directed to file a certified copy of this resolution with the Fire and Police Pension Association no later than August 22, 2014.

RESOLVED THIS 5th DAY OF August, 2014.

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker
City Attorney

City Council Agenda Item 8I

CITY MANAGER'S OFFICE STAFF REPORT

To:	Mayor Richard McLean and Members of City Council
Through:	Manuel Esquibel, City Manager
Prepared By:	Linda Bertr�ne-Gonzales, Assistant To City Manager On Behalf of the Lodging Tax Committee
Date Prepared:	July 28, 2014
Requested Action:	Approval of The Lodging Tax Grant Mini-Grant Recommendation for 2014 and Authorization for The City Manager to Execute Agreements with Award Recipients

PURPOSE:

To accept the Lodging Tax Grant Committee Mini-Grant Award Recommendations, consistent with the provision of City Ordinance No. 2121 Section 3-40-50, C.R.S., use of the tax.

BACKGROUND:

On April 25, 2014 a solicitation for Mini-Grant "Request for Proposals" (RFP) went out to the Brighton Blade and the Banner. In addition, the RFP also was also posted on the City Web-site under legal notices.

The total allocation for the mini-grant funding was \$25,000.00 with a cap per request of \$5,000.00, and a match of cash and/or in-kind. The funding requirement was in line with the Brighton Lodging Tax and Committee's Intent and Purpose, as per City Ordinance No. 2121 Section 3-40-50, C.,R.S., use of the tax.

On July 1, 2014 the Brighton Lodging Tax Advisory Committee (BLTAC) received a total of five (5) Mini-Grant proposals, and met on July 16, 2014 to review the proposals and held interviews from 1:15 pm to 3:00 pm. Out of the five (5) proposals, four are being funded and one (1) withdrew their application.

On July 22, 2014 The BLTA Committee Representatives presented to City Council their recommendations for Council's review and discussion. Below is a summary of the BLTAC's Recommendations for City Council approval.

AWARD SUMMARY:

1. Brighton Chamber of Commerce: *Shop Local Now*: \$5,000.00

This project will be expanding the existing "Live Local Buy Brighton" program by adding a mobile and web-based application that will be available to any business in

Brighton as an innovative marketing tool. This application will exponentially grow local businesses by having consumers using smart phone technology and mobile applications. Lodging Tax funding would support this program to allow the Chamber to launch and market this new mobile platform, and offer the program free of charge or at a significantly reduced cost to Brighton area businesses.

The Local Deals Now is an innovative online and mobile application program that will create a one-stop resource for restaurants, shops, service merchants, events and other community information by allowing participants to promote their business in a number of ways, including:

- Posting of Deals and promotions
- Email Marketing – Allow users to create email marketing campaigns to disseminate information to consumers who opt in for email promotion
- Event Marketing – Allows individual businesses to publish information about events
- Smart Phone Apps – Fully integrated iPhone and Android apps allow consumers to access deals from local businesses by delivering deals, discounts and information directly to smart phone devices
- One Touch Social Media Sharing – published deals and information can be shared to Facebook, Twitter, and Google + with one touch
- Delivered analytics – A key marketing tool, this platform will provide reports to local merchants to analyses the effectiveness of their individual promotions and marketing efforts.

Kiwanis Club of Brighton: Predator A.W.A.R.E. Fair: \$5,000.00

This project is a comprehensive and fun community awareness event that will be Advocating Widespread Access to Resources and Education, A.W.A.R.E. The fair will offer two break-out educational sessions by both nationally recognized and local experts in the various risk/resource categories, as well as an expo component with information, resources, and activities for youth and parents. In addition, the following are some of the program roster sessions occurring at the fair;

- Internet & Technology Safety-presented in English and Spanish by nationally recognized expert, Investigator Mike Harris, Jefferson County District Attorney's Office, Child Sex Offender Internet Investigations Unit.
- Using Local Mobilization to help prevent child abductions - John Guydon, Co-founder of nationally recognized/acclaimed the "Lassy" project will be presenting information about their powerful app and how to utilize it.
- Ending Child Exploitation....Engaging Culture in Creating Solutions – Age appropriate materials, as well as a curriculum for schools.
- The Swimsuit Lesson...Helping Parents protect their Children Against Sexual Predators – Jon Holsten, and Fort Collins sex Crimes Against Children Unit investigator, will be doing a presentation and will be available in the expo area for Q&A, book sales, and signing.

-
- Talking to Your Children about Difficult Topics – Jody Pierce, Executive Director of the Pennock Center for Counseling will provide parents with invaluable information and techniques on how to have those difficult discussions.
 - Basic Self Defense Maneuvers for All ages – Five start Martial Arts' certified black belt instructors will share some basic defense moves to help in a variety of situations.

heART of Brighton / The Armory Performing Arts Center: *Glen Murray at the Market Day Weekend*: \$2,500.00

This project is for the Roast and Toast of Glen Murray at Market Day Weekend held on Friday August 22, 2014 in the evening at 8:00 pm. Glen and Patricia Murray are major contributors to Platte Valley medical Center and they recently made a large donation to the Children's Wing. They have made several positive contributions to the community in the past as well. Many of you might know that Glen and his family were a substantial part of the agricultural fabric in the Brighton community. The Market Day Planning Committee believes that the ongoing addition of the Friday night "Roast and Toast of a Local Grower concept, connected in some way to the contributions to Brighton's agricultural heritage, will increase the number of visitors and make Market Day weekend more of a destination event. This event will bring folks from the outside exposing them to Brighton contributing to Lodging overnight stays as well as shopping.

heART of Brighton / The Armory Performing Arts Center: *An Evening with Albin Wagner, Brighton's Untold Stories*: \$1,000.00

This project is for a dinner with entertaining and enlightening talk about Brighton's colorful past and its personalities, from the sheriff who was once held in his own jail and who owned a saloon that doubled as a church. Knowledge of Brighton's history will foster civic pride, for both our heritage and how far we've come. This event will be held possibly in Oct. near the fifth anniversary date of the Armory. This is a cultural History event that will bring community folks to the Armory and Brighton.

Total Award allocation: \$13,500.00

Brighton Deca: *Promote the City of Brighton*: **Grant Request Withdrawn**

This project was to promote the City of Brighton in the best ways possible such as the city's economic and cultural aspects.

RECOMMENDATION:

Approval of the Lodging Tax Committee Recommendation as presented for a total amount of \$13,500.00 and authorize the City Manager to enter and execute agreements with award recipients to implement the said allocations.

ATTACHMENTS:

2014 Mini-Grant Resolution

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO APPROVING LODGING TAX MINIGRANTS FROM THE LODGING TAX FUND IN THE AMOUNT OF THIRTEEN THOUSAND FIVE HUNDRED (\$13,500.00), FOR CALENDAR YEAR 2014; DESIGNATING THE RECIPIENTS AND AMOUNTS OF SAID GRANTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS WITH THE RECIPIENTS OF THE 2014 ALLOCATION ON BEHALF OF THE CITY; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

RESOLUTION NO. _____

WHEREAS, at the regular election on November 8, 2011, the voters within the City of Brighton approved the imposition of a Lodging Tax, to be effective January 1, 2012, in the amount of three-percent (3%) on short-term lodging of less than thirty (30) days; and

WHEREAS, the City Council adopted Ordinance No. 2121, amending the Brighton Municipal Code by the addition of Article 3-40, implementing the provisions of the Lodging Tax as approved by the voters; and

WHEREAS, Section 3-40-50 of the Brighton Municipal Code sets out the approved uses of the Lodging Tax, to wit: for the purpose of supporting economic development endeavors, special events, cultural arts facilities, advertising and marketing, and promoting tourism and other activities which utilize public accommodations within the City; and

WHEREAS, Section 3-40-170 of the Brighton Municipal Code establishes the Lodging Tax Advisory Committee, the purpose of which is to “*study, investigate and advise the City Council as to the development and promulgation of policies for the implementation, support and use of revenues from the lodging tax*”, consistent with the purposes set forth above, and “*In particular, the Committee will advise the City Council on allocation, budgeting and appropriation of funds from the Lodging Tax Fund consistent with the provisions of Section 3-40-50 of the Code*”; and

WHEREAS, pursuant to Section 3-40-170(c) of the Brighton Municipal Code, the Lodging Tax Advisory Committee adopted rules and regulations for the conduct of its meetings and the process for requesting, receiving, and reviewing applications for the use of monies in the Lodging Tax Fund; and

WHEREAS, consistent with said rules and regulations, the Lodging Tax Advisory Committee (i) prepared a proposed budget for 2014 which was approved by the City Council; (ii) prepared request for proposals and proposal evaluation forms; and (iii) prepared a schedule for the submittal of requests for the Lodging Tax Funds for allocation in calendar year 2014; and

WHEREAS, the Lodging Tax Committee submitted publication and distribution of Requests for Proposals on April 25, 2014, with a submittal deadline of July 1, 2014; and

WHEREAS, the Lodging Tax Committee received six applications for the use of the 2014 Lodging Tax Mini-Grant funds and reviewed each application to verify that it met the stated criteria for use of the funds; and

WHEREAS, the Lodging Tax Advisory Committee interviewed all six applicants on July 16, 2014; and

WHEREAS, the Lodging Tax Advisory Committee has made a recommendation to the City Council on the best use of the Lodging Tax revenues received in 2014; and

WHEREAS, the City Council has reviewed the recommendation from the Lodging Tax Advisory Committee and finds the same to be reasonable and consistent with the letter and intent of Article 3-40 of the Brighton Municipal Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

1. That the following allocations from the Lodging Tax Fund for calendar year 2014 are hereby approved in the amounts specified, pending execution of an agreement with the City for the use of said funds:

A. Brighton Chamber of Commerce	\$5,000.00
B. Kiwanis Club of Brighton	\$5,000.00
C. heART of Brighton (HOB)	
i. <i>Market Day Weekend –Glen Murray</i>	\$2,500.00
ii. <i>An Evening with Albin Wagner-</i>	<u>\$1,000.00</u>
<i>“Brighton’s Untold Stories”</i>	\$3,500.00
D. Brighton DECA – <i>Grant Applicant withdrew request</i>	\$0

Total Allocation: \$13,500.00

2. That the City Council of the City of Brighton hereby authorizes the City Manager to undertake such tasks and execute such documents as may be required to implement said allocations.

ADOPTED this 5th day of August, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

**City Council
Agenda Item
8J**

Staff Report

Reference: 2013 Sales Tax on Food for Home Consumption

To:	Mayor Dick McLean and Members of City Council
Through:	Manuel Esquibel, City Manager
Prepared By:	Bernadette Kimmey, Internal Financial Advisor Dan Frelund, Finance Director
Date Prepared:	July 22, 2014

PURPOSE

To identify the amount of 2013 General Fund Sales Tax collected attributable to food for home consumption and to determine if the amount will be accumulated in the Food Tax Rebate Account (as done in the last few years) or consideration of appropriation for rebating or other usage.

BACKGROUND

In 2001, City Council approved, by Ordinance number 1764, an amendment to the Brighton Municipal Code Section 3-28-15(d), providing that all or a portion of the Food Sales Tax Revenue collected in the previous year may be placed in the Food Sales Tax Rebate Account and may be rebated back to the eligible tax-paying residents of Brighton. This rebate is not mandatory, and City Council may determine that insufficient revenues are available for rebate. The General Fund sales tax collected on food for home consumption is not placed in the Food Sales Tax Rebate Account until City Council approves the dollar amount. Once approved, determination of usage is made by City Council.

The amount of sales tax on food for home consumption that is eligible to be placed into the Food Tax Rebate Account uses a formula set forth in Ordinance number 1764. The steps of this formula are:

1. List all the sales tax collected from businesses located in Brighton that sell food (not fast food or restaurants) and identify the General Fund portion (2%).
2. For each business identified in step 1, determine:
 - a. the percentage of the sales tax collected that is attributable to food for home consumption
 - b. the percentage of the sales tax collected that is paid by Brighton residents
3. This identifies the sales tax collected by the General Fund attributable to food purchased for home consumption by Brighton residents.

City Council has previously set aside \$122,816 in the Food Tax Rebate Account letting it accumulate for future action/appropriation.

FINANCIAL IMPACT

Factors to be considered before determining how much, if any, food sales tax is to be set aside in the Food Tax Rebate Account include:

1. Are the City's Reserves fully funded?
2. Will the City have to cut back on programs and services for its residents if food sales tax is set aside and rebated?
3. Is all or a portion of the food sales tax required to balance the budget?
4. What is the proportionate amount of the unencumbered General Fund - Fund Balance that is attributable to sales tax collections on food for home consumption?

As of 12/31/2013, the General Fund Reserves are fully funded. The minimum amount required to be maintained in the Reserve accounts are: TABOR 3% - \$669,216 and City Council cash flows and emergencies 25% - \$6,213,498. The unencumbered General Fund - Fund Balance is \$1,206,779.

There is a long list of competing uses of the Fund Balance because the City has been short on revenues for the past six years.

The General Fund portion of sales tax collected in 2013 on food for home consumption for Brighton residents equaled \$725,449 (5.90% of general fund sales tax revenues), an increase of \$75,562 over 2012. The proportionate amount of food sales tax revenues of the General Fund – unencumbered fund balance is \$71,200 (5.90% of \$1,206,779 = \$71,200).

STAFF RECOMMENDATIONS:

Approve placing \$71,200 in the Food Tax Rebate Account and letting it accumulate for future usages.

CITY OF BRIGHTON

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, DESIGNATING THE AMOUNT OF THE 2013 BRIGHTON RESIDENTS FOOD TAX REVENUE TO BE REBATED IN CALENDAR YEAR 2014 AT ZERO DOLLARS (\$0.00) AND APPROPRIATING THAT AMOUNT FOR EXPENDITURE IN 2014.

WHEREAS, pursuant to Ordinance No. 1764, beginning in fiscal year 2001, and continuing each fiscal year thereafter, all of the Brighton Residents Food Tax Revenue collected in the previous year, after deducting the amount of food sales tax rebates committed by contractual agreement, shall be redistributed from the General Fund and credited to the City of Brighton Food Tax Rebate Account; and

WHEREAS, the City Manager and the Finance Director have determined that the proportionate amount of the Brighton Residents Food Tax Revenue for calendar year 2013 is seventy-one thousand two hundred dollars (\$71,200); and

WHEREAS, City Council has determined that due to financial constraints, all of the Brighton Residents Food Tax Revenue for calendar year 2013 shall **not** be rebated to the eligible tax-paying residents of Brighton in the form of a Food Tax Rebate check, to be mailed in December 2014, consistent with the requirements and restrictions set forth in Ordinance No. 1764; and

WHEREAS, City Council has determined that a portion of the 2013 General Fund fund balance is to be placed into the Food Tax Rebate Account until City Council approves the dollar amount of the rebate, and the amount is budgeted and appropriated by Resolution; and

WHEREAS, authority is granted by Sections 29-1-109 and 29-1-111 of the Colorado Revised Statutes and Section 10.12 of the City of Brighton Charter to amend the adopted budget for the next fiscal year; and

WHEREAS, those adjustment to the 2014 Budget which are necessary for the 2014 City operations could not have been reasonably foreseen at the time of the adoption of the 2014 Budget; and

WHEREAS, the City Council has been advised by the City Manager that the revision to the 2014 Budget as contained within this Resolution can adequately be implemented as set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brighton, Colorado, as follows:

1. That the Brighton Residents Food Tax Revenue for calendar year 2013 is hereby established in the amount of Zero Dollars (\$0.00)
2. That the total amount of the Brighton Residents Food Tax Revenue for calendar year 2013, in the amount of \$0.00, shall **not** be rebated to the eligible tax-paying residents of Brighton consistent with the requirements of Ordinance No. 1764.
3. That the amount of seventy-one thousand two hundred dollars (\$71,200) be placed into the Food Tax Rebate Account until City Council approves the usage of these funds, and the amount is budgeted and appropriated by Resolution.

Adopted this 5th date of August, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

**City Council
Agenda Item
9A**



To: Mayor McLean and Members of the City Council through City Manager, Manuel Esquibel

Prepared By: Dan Frelund, Finance Director
Sarah Borgers, Assistant Director of Utilities

Date: August 5, 2014

Requested Action: Approval of an Ordinance Establishing a Good Neighbor Pilot Program – First Reading

PURPOSE

Requesting Council approval of an Ordinance establishing a pilot program and resulting accounts to assist Brighton families and individuals who have a temporary and urgent financial inability to pay their utility bill to the City; authorizing the City Finance Department to accept voluntary “round-up” contributions to said accounts; setting aside \$25,000 from the City’s general fund for use in the utility payment assistance accounts; Authorizing the Finance Director, upon recommendation of the Utility Billing Coordinator, to approve assistance awards from the accounts; directing the City Manager to establish policies and procedures including the criteria and standards for eligibility for assistance awards; and setting forth details in relation thereto.

BACKGROUND/HISTORY

City Council has requested staff research and develop a voluntary “round-up program” to assist families and individuals who have a temporary and urgent financial issue that prevent them from paying their Brighton Utility bill.

In response to Council’s request, staff formed a committee to review similar programs, review legal advice, and make recommendations for the development of a pilot program to meet this need. The committee is comprised of both Utilities and Finance Department staff.

The committee reviewed United Power’s existing Round-Up Program and a summary review of other similar programs. United Power’s program is very comprehensive due to the larger service area covered, the higher awards being made, and allowing for reimbursement directly to the customer for various bills including debt payments, contractor expenses and City utility bills. City staff has referred utility customers with financial needs to the United Power program.

The proposed ordinance outlines the establishment of the pilot program, eligibility requirements, application process, and reporting requirements. Specifically:

- \$25,000 would be set aside from the General Fund as seed money to start the program
- Brighton utility customers may volunteer to round their bill up to the nearest dollar. The extra payment would be applied to the Good Neighbor Fund account.
- Eligibility is limited to residential customers and cannot have received assistance in the last 36 months.

- Eligible applicants must submit an application that will be reviewed by the Utility Billing Coordinator who will recommend approval or denial to the Finance Director who may approve the application if the eligibility requirements have been met and there are funds available.
- The program will be presented to Council no less than annually with details of money flow and number of applicants.
- City Council would review program annually for continuation, termination, or modification of the program.

OPTIONS FOR CITY COUNCIL CONSIDERATION

- Approval as presented
- Reject
- Postpone with suggested modifications

FINANCIAL IMPACT

\$25,000 in seed money is being set aside to start the program. When the new Utility Billing system is implemented (scheduled for Fall 2014) customers can then opt in to the program.

ATTACHMENTS:

- Ordinance of the City of Council of the City of Brighton, Colorado Establishing a Pilot Program and Resulting Accounts to Assist Brighton Families and Individuals who have a Temporary and Urgent Financial Inability to Pay their Utility Bill to the City; Authorizing the City Finance Department to Accept Voluntary "Round-Up" Contributions to Said Accounts; Setting Aside \$25,000 from the City's General Fund for Use in the Utility Payment Assistance Accounts; Authorizing the Finance Director, Upon Recommendation of the Utility Billing Coordinator, to Approve Assistance Awards from the Accounts; Directing the City Manager to Establish Policies and Procedures including the Criteria and Standards for Eligibility for Assistance Awards; and, Setting Forth Details in Relation thereto.
- Good Neighbor Program Sample Application Form and Rules
- Good Neighbor Program Sample Standard Operating Procedures

CITY OF BRIGHTON

CITY COUNCIL ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO ESTABLISHING A PILOT PROGRAM AND RESULTING ACCOUNTS TO ASSIST BRIGHTON FAMILIES AND INDIVIDUALS WHO HAVE A TEMPORARY AND URGENT FINANCIAL INABILITY TO PAY THEIR UTILITY BILL TO THE CITY; AUTHORIZING THE CITY FINANCE DEPARTMENT TO ACCEPT VOLUNTARY “ROUND-UP” CONTRIBUTIONS TO SAID ACCOUNTS; SETTING ASIDE \$25,000 FROM THE CITY’S GENERAL FUND FOR USE IN THE UTILITY PAYMENT ASSISTANCE ACCOUNTS; AUTHORIZING THE FINANCE DIRECTOR, UPON RECOMMENDATION OF THE UTILITY BILLING COORDINATOR, TO APPROVE ASSISTANCE AWARDS FROM THE ACCOUNTS; DIRECTING THE CITY MANAGER TO ESTABLISH POLICIES AND PROCEDURES INCLUDING THE CRITERIA AND STANDARDS FOR ELIGIBILITY FOR ASSISTANCE AWARDS; AND, SETTING FORTH DETAILS IN RELATION THERETO.

ORDINANCE NO.:_____

INTRODUCED BY: _____

WHEREAS, the City Council recognizes that when a local family or individual is struggling with financial emergencies and needs that there are times when they are unable to make a timely payment of the utility bill to the City, resulting in a termination of utility services; and

WHEREAS, when utility services are terminated as a result of the inability to pay the utility charges, there are often significant consequences to the users of the utility services including inability to provide basic water, cooking and sanitation; and

WHEREAS, with the collection of a little spare change from Brighton utility customers who voluntarily agree to round-up their utility payments, the needs of others in the community who lack the temporary ability to pay their utility bill will be met and the adverse impacts on the community’s overall health will be avoided; and

WHEREAS, the City Council finds and determines that a Pilot Utility payment assistance program (Good Neighbor Program) should be implemented and a Utility Payment Assistance Accounts should be established for the collection of voluntary rounded-up utility payments and \$25,000 from the City’s General Fund for the provisions of Good Neighbor Program as more fully set forth herein; and

WHEREAS, the City Council further finds and determines that the Good Neighbor Program shall be a ‘pilot’ program, and reviewed on an annual basis to determine if it should be continued, modified or terminated.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON COLORADO, AS FOLLOWS:

SECTION 1. Pilot Program Established. The Utility Department of the City is hereby directed to establish a Pilot Utility payment assistance accounts (known as the Good Neighbor Program) to be administered in accordance with the following:

1. The Finance Director shall transfer the sum of \$25,000 from the City’s General Fund to the Pilot Utility payment assistance accounts.
2. City of Brighton utility customers may upon payment of their City utility bill voluntarily “round-up” their payment to the next dollar and the rounded-up difference shall be placed in the Pilot Utility payment assistance accounts.
3. The Pilot Utility payment assistance accounts shall be available for assisting delinquent utility users upon application and approval in the calendar month following implementation of the new utility billing software.

SECTION 2. Eligibility. To be eligible for assistance in the payment of a delinquent utility bill the following must be met:

1. The application shall be for a utility account in the name of an individual or family. No applications will be accepted or approved for a landlord, commercial, industrial, retail, or other utility customer who is not an individual or family.
2. The applicant shall have demonstrated twelve consecutive months of timely payments of the City utility bills in the prior twenty-four (24) months.
3. The applicant shall provide such evidence and information establishing the temporary financial emergency which has prevented the payment of the utility bill as may be required by the application and the policies and procedures adopted by the City Manager.
4. No award shall exceed three hundred dollars (\$300).
5. An applicant may be awarded Utility payment assistance only once in any thirty-six (36) month period.

SECTION 3. Applications.

1. An individual or family seeking Utility payment assistance shall complete and file with the Utilities Billing Coordinator of the City an application on the form provided by the Utilities Department.
2. The Utilities Billing Coordinator shall review the application and recommend approval or denial to the Finance Director.

3. The Finance Director shall review the application and recommendation of the Utilities Billing Coordinator and may approve the application if the eligibility requirements have been met and there are available funds.
4. Upon approval, the applicant's utility account shall be credited with the amount so approved.

SECTION 4. Miscellaneous.

1. The City Manager shall adopt policies and procedures related to the Pilot Utility payment assistance program, including the form of application, information required in support of the application, eligibility requirements, and other policies and procedures for review and approval of the application.
2. The City Manager shall advise the City Council no less than annually of the status of the Pilot Utility payment assistance program, including the amount of funds contributed by utility customers, number of applications, disposition of the applications, and the remaining funds in the accounts.
3. The Pilot Utility payment assistance program shall be reviewed by the City Council on an annual basis, or before January 1 of each year, to determine if it should be continued, modified or terminated.

SECTION 5. Validity. If any part or parts of this ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof, irrespective of the fact that any one part or parts be declared invalid. If a dispute or conflict arises between the Codes as adopted herein, and the elevator, escalator and conveyance codes adopted by the State of Colorado, then the more stringent provisions of each respective Code shall prevail.

INTRODUCED, PASSED ON FIRST READING, AND ORDERED PUBLISHED
THIS 5th DAY OF August, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the Standard Blade
First Publication: August 13, 2014

APPROVED AS TO FORM:

Margaret R. Brubaker, Esq., City Attorney

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED THIS____
DAY OF _____, 2014.

COLORADO

CITY OF BRIGHTON,

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the Standard Blade
Final Publication: _____



City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303-655-2009 Office
www.brightonco.gov

GOOD NEIGHBOR FUND APPLICATION

Date: _____

Name: _____ Service Address: _____

Work Phone: _____ Home Phone: _____

**A phone number is required so that we may contact you regarding the status of your application.*

E-mail: _____ (Optional)

Do you Own or Rent at the Above Service Location:

- ☐ Own
☐ Rent

Have you ever received assistance from the Good Neighbor Fund in the past?

- ☐ Yes
☐ No

Please describe circumstances and need for assistance:

The Good Neighbor Fund Program is intended to provide assistance to City of Brighton Utilities customers who have encountered unusual financial hardship. The Fund is only available to cover expenses for City of Brighton water, sewer, and stormwater charges and shall not be applied to other utilities, services, or bills. Assistance will be provided based on the need of the customer, availability of funding, previous applications for assistance, previous assistance provided, and the customer's payment history. Assistance is provided on a first come, first serve basis as funds are made available. Applications for assistance will be approved or denied based on these criteria. Program participants will be given priority.

I hereby certify that I have read and agree to the statement above and further certify that the information I have supplied above is accurate to the best of my knowledge.

Signature: _____ Date: _____

Office Use Only:

- ☐ Government Issued ID (Circle One: Driver's License Other)
☐ Delinquency Check
☐ Date of Previous Assistance: _____ ☐ Database Updated

Utility Billing Sign-Off: _____ Date: _____

Finance Department Sign-Off: _____ Date: _____



City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303-655-2009 Office
www.brightonco.gov

Good Neighbor Fund

Rules and Eligibility for Assistance

Good Neighbor Fund Mission Statement

The City of Brighton's Good Neighbor Fund Program provides emergency utility bill payment assistance to individuals and families in Brighton facing a temporary financial crisis. These activities are funded through voluntary contributions from participating City of Brighton customers who choose to round-up their bill and donate funds to the program.

Eligibility

The customer cannot have received assistance through the Good Neighbor Fund within the last 36 months. Government issued ID must be shown at time of application.

Assistance is available for residential customers who are experiencing unusual and difficult financial situations only. City staff may, at their discretion, deny an application if it appears the applicant does not meet these criteria.

Tampering fees and any fines related to criminal charges filed against the customer for tampering with meters or other City facilities are not eligible for reimbursement. Such infractions may disqualify the customer from receiving assistance.

Assistance Provided

Eligible customers may receive a credit to be applied toward their current balance on a City of Brighton utility account. The account may be credited the total current balance or \$300, whichever is less. Assistance is provided on a per account basis independent of number of persons residing within a home.

Assistance will be provided depending on funding availability.



Good Neighbor Fund Standard Operating Procedures

Good Neighbor Fund Mission Statement

The City of Brighton's Good Neighbor Fund Program provides emergency utility bill payment assistance to individuals and families in Brighton facing a temporary financial crisis. These activities are funded through voluntary contributions from participating City of Brighton customers who choose to round-up their bill and donate funds to the program.

1. Assistance Guidelines

a. Eligibility

The customer cannot have received assistance through the Good Neighbor Fund within the last 36 months. Government issued ID must be shown at time of application.

Assistance is available for residential customers who are experiencing unusual and difficult financial situations only.

Tampering fees and any fines related to criminal charges filed against the customer for tampering with meters or other City facilities are not eligible for reimbursement. Such infractions may disqualify the customer from receiving assistance.

To ensure accurate record keeping of payment history, notations must be made of any change of name on an account.

b. Assistance that May be Provided

Eligible customers may receive a credit to be applied toward their current balance on a City of Brighton utility account. The account may be credited the total current balance or \$300, whichever is less. Assistance is provided on a per account basis independent of number of persons residing within a home.

Assistance will be provided on a first come, first serve basis depending on funding availability. Funding will be made available on a monthly basis or until funds have been exhausted.

Shut-off fees, door hanger fees, and bounced-check fees will not be covered under the Good Neighbor Program.

c. Assistance Budgeting

The annual Good Neighbor Fund budget will be presented to City Council for their consideration during the regular budget process.

The Utilities and Finance Department will, at each annual budget cycle, set monthly budgets that will be available for credit back to eligible customers. This budget shall include roll-over funds available from the previous year, expected income for the current year, expenditure limits that will be applied to customer credits, and expected expenditures for Program-related services, fees, and material purchases.

Any unspent budgeted funds can be rolled-over for use in subsequent months.



City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303-655-2009 Office
www.brightonco.gov

2. **Donation Guidelines**

a. **Customer Election to Participate**

A customer may elect to make contributions to the program by marking the check box on their billing stub.

All billing stubs with the customer's request to participate in the program must remain on file for the duration of the program.

An online form will also be provided.

b. **Funds to be Collected**

When a customer provides written verification that they would like to participate in the program, Utility Billing staff will check the Good Neighbor Fund box in Innoprise (as it becomes available to do so). This checked box will cause Innoprise to round the customer's bill up to the next dollar. The difference between the customer's bill and the round-up number will be deposited into the Good Neighbor Fund account number. The rest of the bill will be deposited into the appropriate utility fund account.

Funds deposited into the Good Neighbor Fund shall only be available for Good Neighbor Fund-associated activities including eligible customer credits, advertising, services, and materials that will be directly used for the Good Neighbor Fund Program.

Funds collected are not tax deductible.

3. **Reporting**

- a. A Semi-Annual Report will be provided to the City Council which will include the number of participants, average dollar amount of those assisted, funds collected, and total amount of funds distributed.

**City Council
Agenda Item
9B**

STAFF REPORT

To: Mayor McLean and Members of the City Council through City Manager, Manuel Esquibel
From: Dan Frelund, Finance Director
Date: August 5, 2014
Subject: Approve amendments to 2014 Budget

PURPOSE: To amend the 2014 Budget for the design and construction of the redrill of Well 11

BACKGROUND/HISTORY: Well 11 is the second largest producing well in the South Platte aquifer. It produces a significant amount of water that is necessary for production during peak summertime usage days.

The well was constructed in 1957 and has undergone multiple rehabilitation projects over the years through regular maintenance and other special projects; however, it has reached the end of its useful life and will not be available for use in subsequent summers for water production. A new well and well house must be constructed to take its place. This new well would be drilled and constructed on the same site as the existing well house. The old well would be abandoned per State regulations and the building and other infrastructure would be demolished.

Because the lead time for design, construction, and State approvals and permitting is significant, the City must begin the process of designing and starting permitting processes in 2014 so that the new well facility is ready for the 2015 summer season.

The proposed budget amendment in the capital account for the purposes of designing, constructing, and permitting the construction of a new well will use existing funds from the following sources:

- Water Fund – Fund Balance Plant Investment Fees \$400,000
- Water Fund – Water Resources \$400,000

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM: All changes to the adopted budget must be made by a Supplemental Budget Appropriation or a Budget Re-Appropriation resolution.

BUDGET IMPACT: There is money available in the Water Fund to cover the proposed budget amendments.

OPTIONS FOR COUNCIL'S CONSIDERATION: Approve the budget amendments as presented, amend or deny.

STAFF RECOMMENDATIONS:

Approve the following supplemental budget appropriation in the Water Fund:

REVENUES

Fund Balance - Plant Investment Fees	\$400,000
--------------------------------------	-----------

EXPENDITURES

Water Resources	(400,000)
Project 94041 Well #11 Design, Construction & Permitting	<u>800,000</u>
Total Expenditures	400,000

**CITY OF BRIGHTON, COLORADO
2014 BUDGET AMENDMENTS**

**A RESOLUTION AMENDING CERTAIN ACCOUNTS IN THE WATER FUND
AND APPROPRIATING MONEY FOR EXPENDITURE.**

Resolution Number _____

WHEREAS, authority is granted by sections 29-1-109 and 29-1-111 of the Colorado Revised Statutes and Section 10.12 of the City of Brighton, Colorado Charter to amend the adopted budget for the current fiscal year; and

WHEREAS, those adjustments to the 2014 Budget which are necessary for the 2014 City operations could not have been reasonably foreseen at the time of the adoption of the 2014 Budget; and

WHEREAS, the City Council has been advised by the City Manager that the revision to the 2014 Budget as contained within this resolution can adequately be implemented as set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brighton, Colorado that:

The Water Fund shall be amended in the following accounts:

REVENUES

Fund Balance - Plant Investment Fees	\$400,000
--------------------------------------	-----------

EXPENDITURES

Water Resources	(400,000)
Project 94041 Well #11 Design, Construction & Permitting	<u>800,000</u>
Total Expenditures	400,000

ADOPTED this 5th day of August, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

**City Council
Agenda Item
9C**

Department of Utilities

Reference: Approval of the Amendment to Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for the North Outfall, City of Brighton

To: Mayor and Members of City Council
Through: Manuel Esquibel, City Manager

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: _____

Prepared By: Juliana Archuleta, Stormwater Coordinator
Through: Clint Blackhurst, Interim Utilities Director

Date Prepared: April 14, 2014

PURPOSE

Adoption of an amendment to a 2006 IGA with the Urban Drainage and Flood Control District (Urban Drainage) that will allow the City to receive additional funds in the amount of \$150,000 from Urban Drainage for the continuation of the North Outfall project.

BACKGROUND

Urban Drainage is a quasi-governmental agency that has partnered with the City to construct regional detention and conveyance structures for stormwater within the City. Urban Drainage receives mill levies within member counties that they can then use towards planning and construction of regional stormwater facilities within the District boundaries. Portions of Brighton within Adams County are within Urban Drainage's District and are therefore eligible to receive funds to assist with regional planning and construction. Urban Drainage champions best practices in the industry, and finances, manages, and constructs projects that protect public health and safety and also the environment.

Urban Drainage and Brighton entered into an IGA in 2006 to fund the design and construction of the North Outfall improvements. The project is to be jointly funded between Brighton and Urban Drainage.

Brighton has contributed \$1,731,000 to date and Urban Drainage has contributed \$725,000 for a total combined amount of \$2,456,000 contributed. These funds have completed Phase 1A of the project which included design and construction of a section of drainage channel from the South Platte River to just west of the railroad spur line crossing at the intersection of Denver St. and N. Main. There is currently a balance of \$122,820.17 remaining for subsequent phases.

Phase 1B includes the construction of the spur line crossing at the intersection of Denver St. and N. Main. The estimated cost of this construction is approximately \$500,000. Phase 1C is expected to cost approximately \$1.0 million. This will include boring under existing railroad right-of-way to the Fulton Lateral immediately to the east.

Urban Drainage and the City of Brighton will continue setting funds aside until there is sufficient funding to construction Phase 1B and Phase 1C all at once.

By amending the 2006 IGA, Urban Drainage is agreeing to pay an additional \$150,000 into the fund towards the completion of this project.

	Percentage Share	Previously contributed	Additional Contribution	Sub-total Contribution
UDFCD	33.58%	\$ 725,000	\$150,000	\$875,000
CITY	66.42%	\$1,731,000	\$0	\$1,731,000
Total	100.00%	\$2,456,000	\$150,000	\$2,606,000

FINANCIAL IMPACT

The City does not have to contribute funding for this amendment. Urban Drianage is contributing \$150,000.

OPTIONS FOR COUNCIL CONSIDERATION

Council may:

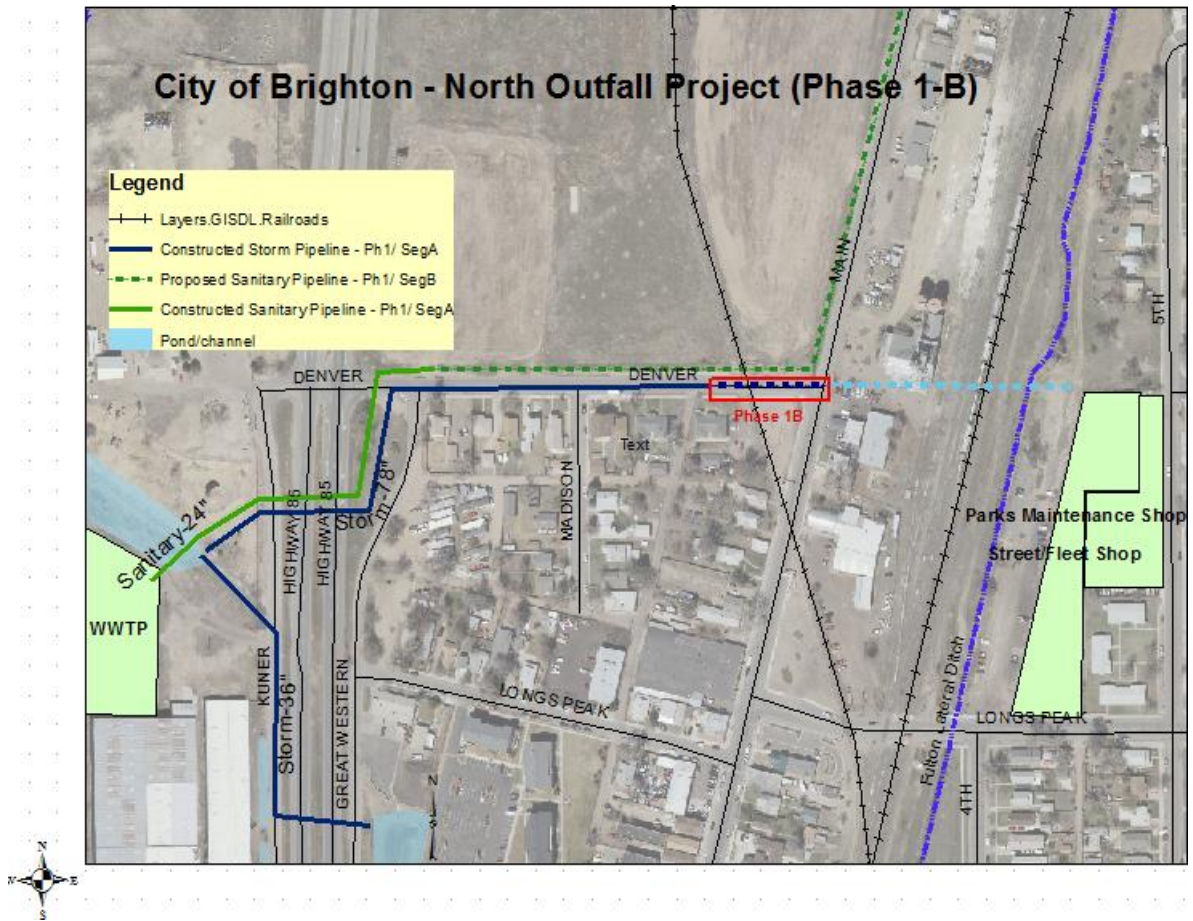
- Approve as presented.
- Reject the IGA Amendment.
- Postpone consideration of the Amendment with suggested modifications.

STAFF RECOMMENDATION

Staff recommends approval of the IGA Amendment No. 06-01.25D.

Attachments:

- Resolution.
- IGA Amendment No. 06-01.25D



RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACCEPTING AN AMENDMENT TO THE AGREEMENT WITH URBAN DRAINAGE AND FLOOD CONTROL DISTRICT NO. 06-01.25D REGARDING DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR THE NORTH OUTFALL, CITY OF BRIGHTON AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT ON BEHALF OF THE CITY.

RESOLUTION NO. _____

WHEREAS, the City of Brighton ("City") is a participant in the Urban Drainage and Flood Control District (UDFCD), and

WHEREAS, citizens of the City of Brighton contribute a 0.1 mill ad valorem tax to UDFCD for the services and master planning for the drainage and flood control; and

WHEREAS, the Design & Construction Program of UDFCD is responsible for the design and construction of master planned projects; and

WHEREAS, UDFCD has agreed to contribute \$150,000 in 2014 to the interest-bearing fund for construction of the master planned project to alleviate drainage problems in the North Outfall portion of the City of Brighton; and

WHEREAS, the UDFCD is capable of providing expert project management assistance throughout the course of final design and construction of the needed project thereby ensuring that the facilities will be eligible for maintenance by UDFCD; and

WHEREAS, the City shall maintain project oversight throughout the design and construction of the project, and provide approvals to all expenditures made throughout the duration of the project.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:

1. That the Amendment to the Intergovernmental Agreement (IGA) No. 06-01.25D between the City of Brighton and the Urban Drainage and Flood Control District, **attached as Exhibit A**, is hereby approved, and that the Mayor is authorized to execute the Amendment Agreement, for and on behalf of the City;
2. That the City Manager and his authorized designee are hereby authorized to cause the agreement to be faithfully performed for the construction of drainage improvements in and around the North Outfall.

RESOLVED, this 5th day of August, 2014.

CITY OF BRIGHTON, COLORADO
CITY COUNCIL

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

AMENDMENT TO
AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
THE NORTH OUTFALL, CITY OF BRIGHTON

Agreement No. 06-01.25D

THIS AGREEMENT, made this _____ day of _____, 2014, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF BRIGHTON (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for the North Outfall, City of Brighton" (Agreement No. 06-01.25) dated April 14, 2006, as amended; and

WHEREAS, PARTIES now desire to construct the improvements along the North Outfall at Midland Street; and

WHEREAS, PARTIES desire to increase the level of funding by \$150,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 11, Series of 2014); and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:
 1. Final design services;
 2. Construction of improvements;
 3. Contingencies mutually agreeable to PARTIES.
- B. It is understood that PROJECT costs as defined above are not to exceed \$2,606,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>PREVIOUSLY</u>	
	<u>AS AMENDED</u>	<u>AMENDED</u>
1. Final Design	\$ 310,000	\$ 310,000
2. Construction	2,196,000	2,046,000
3. Contingency	100,000	100,000
Grand Total	\$2,606,000	\$2,456,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	33.58%	\$ 725,000	\$150,000	\$ 875,000
CITY	66.42%	\$1,731,000	\$ -0-	\$1,731,000
TOTAL	100.00%	\$2,456,000	\$150,000	\$2,606,000

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval. Payment of each party's full share (CITY - \$1,731,000; DISTRICT - \$875,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

3. All other terms and conditions of Agreement No. 06-01.25 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

ATTEST:

By_____

Title Executive Director

Date_____

CITY OF BRIGHTON

(SEAL)

ATTEST:

APPROVED AS TO FORM:

City Attorney

By_____

Title_____

Date_____